

1 STATE OF MINNESOTA  
2 COUNTY OF RAMSEY  
3 - - - - -  
4 THE STATE OF MINNESOTA,  
5 BY HUBERT H. HUMPHREY, III,  
6 ITS ATTORNEY GENERAL,  
7 and  
8 BLUE CROSS AND BLUE SHEILD  
9 OF MINNESOTA  
10 Plaintiffs,  
11 -vs- Case File No. C1-94-8565  
12 PHILIP MORRIS INCORPORATED,  
13 R.J. REYNOLDS TOBACCO COMPANY,  
14 BROWN & WILLIAMSON TOBACCO CORPORATION,  
15 B.A.T. INDUSTRIES P.L.C.,  
16 BRITISH-AMERICAN TOBACCO COMPANY LIMITED,  
17 BAT (U.K. & EXPORT) LIMITED,  
18 LORILLARD TOBACCO COMPANY,  
19 THE AMERICAN TOBACCO COMPANY,  
20 LIGGETT GROUP, INC.,  
21 THE COUNCIL FOR TOBACCO RESEARCH - U.S.A.,  
22 INC., AND THE TOBACCO INSTITUTE, INC.  
23 Defendants  
24 - - - - -  
25 DEPOSITION OF BYRON F. PRICE - VOLUME I  
STIREWALT & ASSOCIATES  
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1 (The following is the deposition of BYRON  
2 F. PRICE, taken pursuant to Notice of Taking  
3 Deposition, at the offices of Dorsey & Whitney,  
4 250 Park Avenue, 16th Floor, New York, New York,  
5 commencing at approximately 8:30 o'clock a.m.,  
6 August 25, 1997.)

## 7 APPEARANCES:

8 On Behalf of the Plaintiffs:

9 Robins, Kaplan, Miller & Ciresi  
10 Daniel A. O'Fallon  
11 2800 LaSalle Plaza  
12 800 LaSalle Avenue  
13 Minneapolis, Minnesota 55402-2015

14 On Behalf of Philip Morris Incorporated:

15 Dorsey & Whiteny  
16 Daniel J. Ballintine  
17 Pillsbury Center South  
18 220 South Sixth Street  
19 Minneapolis, Minnesota 55402-1498

20 On Behalf of Brown & Williamson Tobacco  
21 Corporation:

22 Chadbourne & Parke  
23 David L. Wallace  
24 30 Rockefeller Plaza  
25 New York, New York 10112-0127  
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1 On Behalf of The American Tobacco Company:  
2 Leonard, Street and Deinard  
3 John W. Getsinger  
4 150 South Fifth Street  
5 Suite 2300  
6 Minneapolis, Minnesota 55402  
7 On Behalf of Lorillard Tobacco Company:  
8 Michael R. Docherty  
9 Docherty, Rumble & Butler  
10 2800 Minnesota World Trade Center  
11 30 East Seventh Street  
12 St. Paul, Minnesota 55101-4999  
13  
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1 P R O C E E D I N G S

2 (Witness sworn.)

3 (Plaintiffs' Exhibit 1125 was  
4 marked for identification.)

5 MR. WALLACE: Mr. O'Fallon, upon  
6 receipt of Plaintiff's 30.02(f) Deposition Notice,  
7 we searched for a witness with knowledge of the  
8 five topics listed in your Deposition Notice,  
9 which has been marked as Plaintiffs' Exhibit  
10 Number 1125.

11 The topics listed are "Public  
12 statements relating to health effects of smoking,"  
13 and it says "addition and scientific research" --

14 MR. O'FALLON: It means  
15 "addiction," sir.

16 MR. WALLACE: I imagine that's a  
17 typo.

18 MR. O'FALLON: That's correct.

19 MR. WALLACE: Point two, "The  
20 health effects of smoking."

21 Point three, "Addiction."

22 Point four, "R&D activities."

23 Point five, "The control of

24 nicotine," et cetera.

25 As you're well aware, The American

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1 Tobacco Company no longer exists. It was acquired  
2 by and subsequently merged into the  
3 Brown & Williamson Tobacco Corporation.

4 As a result, while there may well  
5 have once been employees, officers, directors, et  
6 cetera of the American Tobacco Company who had  
7 knowledge with respect to the five topics listed  
8 in your Deposition Notice, they are no longer  
9 within the control of B&W.

10 We asked some of the people who we  
11 believed might have knowledge -- extensive or  
12 comprehensive knowledge of all five topics to  
13 testify in response to this Notice. Those  
14 employees, officers and directors are no longer  
15 within the control of Brown & Williamson, and each  
16 of those individuals declined to cooperate with us  
17 in connection with this Notice.

18 Mr. Price is a former employee of  
19 the American Tobacco Company who was asked to join  
20 Brown & Williamson following acquisition in late  
21 1994/early 1995.

22 Mr. Price is an analytical chemist  
23 employed by The American Tobacco Company in its  
24 research and development laboratory from 1965  
25 until late 1994 and 1995, worked at all times

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1 within R&D. He was never in a policy-making  
2 decision with respect to any of the five  
3 deposition topics you propose for discussion  
4 today.

5 Mr. Price's knowledge, therefore,  
6 to some extent is limited by the circumstances of  
7 his employment.

8 With these caveats and these  
9 limitations, Mr. Price is here to do his best to  
10 answer your questions.

11 The last thing I would like to  
12 request, Mr. O'Fallon, is that, given the broad  
13 range of topics you've identified for discussion  
14 and testimony this morning, to the extent you're  
15 able to, and I understand, of course, how these  
16 things go, I'd appreciate it if you're able to to  
17 please let us know when you're beginning or ending  
18 these topics so we can have some form of  
19 transition, if that's possible.

20 Thanks.

21 MR. O'FALLON: Well, let me just  
22 state for the record that you have a duty on  
23 behalf of your client to either find somebody who  
24 is capable of speaking on these subjects or to  
25 educate someone who is capable to speak on these

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1 subjects.

2 It is my understanding that this  
3 gentleman will be speaking as a voice for The  
4 American Tobacco Company. He will be treated as  
5 such. If he is unable to answer questions or if  
6 you interfere in my ability to take this  
7 deposition, we will, of course, be before the  
8 Court on a Motion to Compel and a Motion for  
9 Sanctions.

10 I'm sure you're well aware of that  
11 procedure. You have been very eager to appeal all  
12 of those, so with that said, I would also tell you  
13 that the statement you made today, you were  
14 capable of making presumably two or three weeks  
15 ago when I was informed that this deposition would  
16 go forward.

17 I can't understand why you had to  
18 wait until we show up here for the deposition to  
19 make your statement. If you had something to say  
20 on that matter, I'm certain you could have written  
21 me a letter that would have said something similar  
22 to it, and if there were some gaps, we could have  
23 discussed it, but, of course, as always, you've  
24 waited until the last minute.

25 MR. WALLACE: This is my first  
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1 appearance in this case, Mr. O'Fallon, so I  
2 don't -- I'm not entirely sure what you're talking  
3 about and I take exception to the personal nature  
4 of them.

5 I also take exception to your  
6 contention that either Mr. Getsinger or myself had  
7 a duty to educate any witness in this or any other  
8 case, and with that --

9 MR. O'FALLON: Once again, sir, if  
10 we need to, we'll go before a Court, and the fact  
11 that it's your first appearance is your problem,  
12 not mine.

13 MR. WALLACE: I don't view it as a  
14 problem in any -- to any extent, Mr. O'Fallon.

15 MR. O'FALLON: Well, good, then.  
16 Hopefully, you'll understand the law and the way  
17 this case has proceeded so far.

18 MR. WALLACE: Well, I understand  
19 the law as well as you do, Mr. O'Fallon, so with  
20 those caveats out of the way and that little side  
21 bar, why don't please begin for the reason that  
22 we're here.

23 MR. O'FALLON: You started off the  
24 side bar, my friend, not me.

25 MR. WALLACE: I'd appreciate it,  
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1 Mr. O'Fallon, if we can start now.

2 MR. O'FALLON: I know. As always,  
3 you like to have whatever you say on the record.

4 MR. WALLACE: Before we begin, how  
5 do I engage this so that it begins showing us what  
6 is being said here?

7 "On-line" -- there's a button that  
8 says "on-line" --

9 MR. O'FALLON: Let's go off the  
10 record so counsel can figure out to how use the  
11 equipment.

12 (Discussion off the stenographic  
13 record.)

14 (Witness sworn.)

15 CROSS EXAMINATION

16 BY MR. O'FALLON:

17 Q. Could you please state your full  
18 name for the record.

19 A. Full name is Byron Frederick Price.

20 Q. Mr. Price, I have marked as  
21 Plaintiffs' Exhibit 1125 a document that is  
22 entitled "Notice of Taking Deposition."

23 Have you had a chance to review  
24 this previously?

25 A. Yes, certainly, another copy of it.

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1 Q. You understand that you're here  
2 today on behalf of the American Tobacco Company;  
3 correct?

4 A. Yes, I believe that's so.

5 Q. You have been designated to testify  
6 on certain topics; is that your understanding?

7 A. Yes.

8 Q. And you are prepared to so testify?

9 A. I'll try.

10 Q. Specifically, you have been  
11 designated to testify concerning public statements  
12 relating to health effects of smoking and  
13 addiction and scientific research; correct?

14 A. Yes.

15 Q. And you're ready to so testify on  
16 that topic?

17 A. The best that I can, yes.

18 Q. You have also been designated to  
19 testify concerning the health effects of smoking;  
20 correct?

21 A. Yes.

22 Q. And you're ready to so testify?

23 A. The best that I can.

24 Q. You've also been designated to  
25 testify concerning addiction, correct?

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1 A. Yes.  
2 Q. And you're ready to so testify?  
3 A. Yes.  
4 Q. You have been designated to testify  
5 concerning research and development activities;  
6 correct?  
7 A. Yes.  
8 Q. And you're ready to so testify?  
9 A. Right.  
10 Q. And finally, you have been  
11 designated to testify concerning the control of  
12 nicotine and other reinforcing substances in  
13 cigarettes and design and manufacture of  
14 cigarettes Re same"; correct?  
15 A. Right.  
16 Q. And you are prepared to testify?  
17 A. Yes, sir.  
18 Q. Before we go to the substance, I  
19 would like to get a little background information  
20 on you.  
21 What year did you graduate from  
22 high school?  
23 A. High school; 1954.  
24 Q. And after that, did you attend  
25 college?

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1 A. Yes, I did.  
2 Q. Where did you go?  
3 A. Penn State University.  
4 Q. And did you obtain a degree?  
5 A. I got a degree there in '58.  
6 Q. And what was that degree in?  
7 A. Agriculture and biological  
8 chemistry.  
9 Q. Did you obtain additional education  
10 after that time?  
11 A. Yes, I did.  
12 Q. And where did you go?  
13 A. University of Missouri.  
14 Q. And what degree did you obtain?  
15 A. M.S.  
16 Q. And what was that in?  
17 A. Analytical biochemistry.  
18 Q. And again, M.S. is Master's of  
19 Science; is that correct?  
20 A. That's correct.  
21 Q. And what year was that?  
22 A. '64 -- yeah.  
23 Q. And did you obtain any additional  
24 education after that?  
25 A. I had different -- I had additional  
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1 courses while I was there working, yes. I  
2 obtained no other degrees.

3 Q. So, your highest degree is a Master  
4 of Science?

5 A. Right.

6 Q. I would like to talk with you  
7 briefly about your employment history.

8 A. Okay.

9 Q. Where did you work prior to joining  
10 American Tobacco in 1965?

11 A. I worked at the University of  
12 Missouri, agricultural experiment station.

13 Q. And what did you do there?

14 A. I had the title of a research  
15 instructor, and I was involved in analytical  
16 chemistry for other branches of the university.

17 Q. What types of analytical work did  
18 you do?

19 A. Primarily, gas chromatography, and  
20 it had to do with people in agronomy or entomology  
21 or other departments.

22 Q. Any other jobs before joining  
23 American Tobacco?

24 A. No, sir.

25 Q. Do you recall the precise date you  
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1 had joined The American Tobacco Company?

2 A. Yes, April 22, 1965.

3 Q. And what was your first position  
4 with American Tobacco?

5 A. Junior research associate, I  
6 believe.

7 Q. Who was your immediate supervisor  
8 when you started?

9 A. A gentleman by the name of Everett  
10 Cogbill.

11 Q. And what department were you in?

12 A. Research and development.

13 Q. And where were you located? Where  
14 was your job located?

15 A. When I first started, it was in  
16 south-side Richmond.

17 Q. And when did it move?

18 A. Well, I moved in January of '66.

19 Q. And where did you move to?

20 A. A new research facility just  
21 outside of Hopewell, Virginia, commonly referred  
22 to as "Bermuda Hundred."

23 Q. And how long did you remain at the  
24 Bermuda Hundred facility?

25 A. Until it was closed.

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1 Q. And when was it closed?

2 A. Excuse me, that's incorrect. Until  
3 Brown & Williamson took over and I joined the  
4 Brown & Williamson staff. I wasn't there until it  
5 closed.

6 Q. Did Brown & Williamson close the  
7 Bermuda Hundred facility?

8 A. Yes, they did.

9 Q. When did they close that?

10 A. June -- June 30, 1995.

11 Q. Do you know why they closed that  
12 facility?

13 A. They already had a research  
14 facility in Macon, Georgia.

15 Q. And did you move to that research  
16 facility?

17 A. Yes, I did.

18 Q. If we could, I would just like to  
19 go through your work history at American Tobacco  
20 Company.

21 You said you started out in  
22 1965 -- and, I'm sorry, I forget your title  
23 again. It was --

24 A. Junior research associate.

25 Q. And how long did you remain a  
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1 junior research associate?  
2 A. Maybe a couple years.  
3 Q. What was your next job title?  
4 A. I believe it was research  
5 associate.  
6 Q. And do you recall approximately  
7 when you became a research associate?  
8 A. '68ish.  
9 Q. And, I'm sorry --  
10 A. I can't do much better than that.  
11 Q. That's fine. I don't need precise  
12 dates, just more or less.  
13 A. Uh-huh.  
14 Q. And at that time, you were still in  
15 R&D; is that correct?  
16 A. That's correct.  
17 Q. Were you in a specific department  
18 of R&D?  
19 A. R&D was called a department of  
20 research and development, meaning the whole thing.  
21 Q. Was there any subdivisions?  
22 A. We had subdivisions, and one was  
23 called -- they were called "sections."  
24 Q. And what were the sections in 1968?  
25 A. We had a research section, which I  
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1 was in. Let's see, we had blend, blend  
2 development, and the others were product  
3 development, and let's see, a couple of others.

4 One was called -- something the  
5 matter of basic materials, and another yet  
6 manufacturing and factory service, or something  
7 like that.

8 Q. Okay. Any others?

9 A. Huh-uh, no, not when I joined. I'm  
10 sorry.

11 Q. How about in 1968, some three years  
12 later?

13 A. Well, during that period of time,  
14 we probably had the one formup called "process  
15 development," and for a short period of time, and  
16 it really never was used, was a biological  
17 section.

18 Q. Who headed up the biological  
19 section?

20 A. Gentleman by the name of Arthur  
21 Burke.

22 Q. And how long was the biological  
23 section in existence?

24 A. I don't know, really; maybe until  
25 1970 or '69, something like that.

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1 Q. For one year; was it open for more  
2 than one year?

3 A. No. The facility -- the new  
4 research facility had opened in '66, and maybe it  
5 was right before that or about that time on  
6 into -- several years, couple years.

7 Q. So, the biological section was in  
8 existence for several years?

9 A. Yes.

10 Q. And what kind of work did they do  
11 in the biological section?

12 A. Well, actually, it never became  
13 more than one person.

14 Q. What kind of work did they do or  
15 did he do?

16 A. Read papers. There were certainly  
17 some plans to do more work, but he didn't -- we  
18 never -- we never got involved in it.

19 Q. You had animal facilities at  
20 Bermuda One Hundred; correct?

21 A. No, we didn't.

22 Q. Didn't you have animal facilities  
23 built there?

24 A. We had some facilities built to do  
25 some work, but none ever came into being.

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1 Q. So, it's your testimony that there  
2 were never animals in the animal facilities?

3 A. Absolutely, that's true.

4 Q. What was your next position after  
5 research associate?

6 A. Assistant research manager.

7 Q. And when did you become assistant  
8 research manager?

9 A. Well, I guess about 1970.

10 Q. And who did you report to at that  
11 time?

12 A. Still Everett Cogbill.

13 Q. How many people did you have under  
14 you at that point?

15 A. Well, let's see. I guess the  
16 section had about ten -- not all necessarily  
17 reporting directly to me, but certainly I could  
18 have that.

19 Q. Would that have included the  
20 biological section or would that have included  
21 Dr. Burke or Mr. Burke?

22 A. No.

23 Q. Who did he report to?

24 A. He reported to Mr. Ed Harlow.

25 Q. And what were your responsibilities

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1 as assistant research manager?

2 A. It was nonroutine analytical work.

3 Q. What does that mean?

4 A. Well, it means that we didn't do  
5 any of the routine smoking and testing, we did  
6 some identification of the -- the identification  
7 of things in tobacco and smoke, special incoming  
8 materials, that sort of stuff.

9 Q. Did part of your work involve  
10 identifying carcinogenic substances in tobacco  
11 smoke?

12 A. We did identification of smoke in  
13 cigarettes and cigars.

14 Q. And did that include the  
15 identification of carcinogenic substances?

16 A. No, we weren't particularly -- we  
17 weren't a biological laboratory. It was strictly  
18 chemical.

19 Q. Did you, in fact, find substances  
20 that were known to be carcinogenic in tobacco  
21 smoke?

22 MR. WALLACE: Objection. You can  
23 answer.

24 THE WITNESS: Okay. I'm new at  
25 this.

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1 MR. O'FALLON: Yeah. He can make  
2 an objection, but unless he instructs you to  
3 answer, you still need to answer.

4 A. Okay. That -- later, there was  
5 things that were classified as animal carcinogens;  
6 I'm sure we probably ran across those.

7 If you're asking me a specific one,  
8 I don't remember any.

9 Q. Do you have any idea how many  
10 carcinogens you ultimately identified in tobacco  
11 smoke?

12 A. I don't know that we identified  
13 any.

14 Q. Do you have any idea of how many  
15 carcinogens that were known to be carcinogenic in  
16 animal models you identified as existing in  
17 tobacco smoke?

18 A. No, I don't.

19 Q. More than ten?

20 A. I have no idea.

21 Q. Did you ever report your work in  
22 the literature?

23 A. No.

24 Q. Did anybody at American Tobacco  
25 ever report in the literature the substances they

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1 found in tobacco smoke?  
2 A. No.  
3 Q. So, whatever substances you  
4 identified in cigarette smoke, you kept that  
5 knowledge to yourself; correct?  
6 MR. WALLACE: Objection.  
7 A. We did not publish any.  
8 Q. You kept it to yourself; correct?  
9 A. Sure.  
10 Q. Did you share it with other  
11 manufacturers?  
12 A. No.  
13 Q. Were you ever instructed to  
14 specifically look for carcinogenic substances in  
15 the tobacco smoke?  
16 A. Nope.  
17 Q. What was your next position after  
18 assistant research manager?  
19 A. Research manager.  
20 Q. And when did you become research  
21 manager?  
22 A. About 1981.  
23 Q. And at that time, how many people  
24 reported to you?  
25 A. Twelve -- twelve, thirteen,  
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1       fourteen.  
2             Q.       Who did you report to at that time?  
3             A.       I reported to Dick Irby.  
4             Q.       And who is he?  
5             A.       Well, search for the title --  
6       manager, new products, I believe -- new products  
7       division. Yeah, I think that's it.  
8             Q.       In 1970, you reported to  
9       Mr. Cogbill; correct?  
10            A.       That's correct.  
11            Q.       What was his title when you  
12       reported to him?  
13            A.       Well, for awhile, it was research  
14       manager. The whole time I reported to him, that's  
15       what it was, yes.  
16            Q.       And was he the research manager the  
17       entire time that you were the assistant research  
18       manager from 1970 to 1981?  
19            A.       Yes.  
20            Q.       How long did you remain research  
21       manager?  
22            A.       Until January of '91.  
23            Q.       What were your duties and  
24       responsibilities as research manager from 1981 to  
25       1991?

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1 A. To manage the research section and  
2 whatever it needed to do.

3 Q. Did you do any bench research  
4 during that time period?

5 A. No, I didn't.

6 Q. During that entire time period from  
7 1981 to 1991, did you report to Dick Irby?

8 A. No. He retired.

9 Q. When did he retire?

10 A. Eighty -- '82 or '3.

11 Q. Who did you report to after he  
12 retired?

13 A. A Richard Chumney.

14 Q. I'm sorry, I didn't get the last  
15 name.

16 A. Richard Chumney.

17 Q. And what was his title?

18 A. I believe it was director of new  
19 product development.

20 Q. And did you report to him until  
21 1991?

22 A. Yes.

23 Q. And did he remain the director of  
24 new product development during the entire time  
25 that you reported to him?

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1 A. Yes.  
2 Q. In 1991, what was your new title?  
3 A. Research director.  
4 Q. Was that a newly established  
5 position?  
6 A. It wasn't newly established, but  
7 the person I replaced actually had a title of a  
8 vice president.  
9 Q. Who did you --  
10 A. And we just flip-flopped.  
11 Q. Who did you replace?  
12 A. A Preston Leeke.  
13 Q. And his title had been what?  
14 A. I think it was vice president,  
15 research. That title went to somebody else.  
16 Q. Who did that title go to?  
17 A. Richard Chumney.  
18 Q. As research director, did you  
19 continue to report to Richard Chumney?  
20 A. Yes; yes.  
21 Q. And approximately how many people  
22 did you have under you as research director?  
23 A. About 75.  
24 Q. What were the various departments  
25 that you directed as research director?  
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1           A.       I had a section that dealt with  
2 manufacturing and quality assurance.

3           MR. O'FALLON: Let's go off the  
4 record for a second.

5                   (Discussion off the stenographic  
6 record.)

7 BY MR. O'FALLON:

8           Q.       Before we went off the record, we  
9 were talking about the various departments that  
10 reported to you as research director. I believe  
11 you said one was manufacturing and quality  
12 assurance?

13          A.       That's correct.

14          Q.       What were the others?

15          A.       And another one was leaf services,  
16 research and technical services, and -- I have  
17 more -- one was entomology and moisture  
18 department, and another was called analytical  
19 services.

20          Q.       And how long did you remain the  
21 research director?

22          A.       Until the takeover.

23          Q.       And when did you officially leave  
24 American Tobacco Company to join  
25 Brown & Williamson?

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1 A. March 1, 1995.

2 Q. And at that time, you moved to  
3 Georgia?

4 A. That's correct.

5 Q. What was your title?

6 A. Director, analytical research.

7 Q. And how many people do you have  
8 reporting to you?

9 MR. WALLACE: Objection, beyond the  
10 scope of this deposition.

11 You can answer.

12 A. Twenty-nine.

13 Q. Did anybody else in the research  
14 department also join Brown & Williamson?

15 A. Yes, they did.

16 Q. Any people senior to you?

17 A. No.

18 Q. How many people junior to you  
19 joined the research department, or joined  
20 Brown & Williamson?

21 MR. WALLACE: Objection.

22 A. I believe it was seven.

23 Q. So, there are currently what, eight  
24 former American Tobacco Company employees from the  
25 research department who are now working with the

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1 Brown & Williamson?  
2 A. I think that's correct.  
3 Q. And are you still the director of  
4 analytical research?  
5 MR. WALLACE: Objection.  
6 A. Yes, I am.  
7 Q. Did you receive any benefits from  
8 American Tobacco as a result of the transfer of  
9 ownership?  
10 MR. WALLACE: Objection, vague and  
11 ambiguous.  
12 A. Such as --  
13 Q. Severance pay?  
14 A. No.  
15 Q. Retirement benefits?  
16 A. That transfers to the new company,  
17 so I received nothing separate.  
18 Q. Anything else?  
19 A. You mean, other than a moving  
20 allowance, or something? I mean, I got that, and  
21 I had some stock options and the company bought  
22 those out at whatever market price I had.  
23 Q. Okay. And what company were those  
24 stock options in?  
25 A. American Brands.  
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1 Q. So, you had stock options in  
2 American Brands?

3 A. Right.

4 Q. And you received those stock  
5 options from American Brands as what, part of an  
6 incentive program?

7 A. Yes.

8 Q. And how long had you been piling up  
9 those stock options?

10 MR. WALLACE: Objection.

11 A. Well, I obtained this beginning  
12 somewhere around '87, maybe.

13 Q. Was that -- was that part of any  
14 kind of program, or how did you come to receive  
15 this?

16 A. Well, there was a program, a  
17 certain level of people got a certain amount, and  
18 if you increased your position in the company, why  
19 you generally got -- were allowed some more. I  
20 don't know what the ranges were.

21 Q. When is the first time you received  
22 stock options?

23 A. We were granted these options --  
24 whether they used them or not -- is that what  
25 you're asking me?

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1 Q. Yeah. When is the first time you  
2 were granted the options -- any options?  
3 A. I think it was '87.  
4 Q. And again, the options you were  
5 granted were options to buy American Brands stock;  
6 is that correct?  
7 A. That's correct.  
8 Q. In 1987 when you received a check,  
9 what was the name at the top of the check?  
10 A. That's a paycheck; is that what  
11 you're asking?  
12 Q. Yeah, paycheck.  
13 A. I don't know. I never received a  
14 check. It went directly to the bank. I don't  
15 know.  
16 Q. Was it American Brands?  
17 A. 19 -- I want to think it said  
18 "American Tobacco," but I don't know.  
19 Q. Was American Tobacco a publicly  
20 traded company in 1987?  
21 A. No, it was not.  
22 Q. Do you consider yourself an  
23 employee of American Tobacco from 1965 to 1995?  
24 A. Yes.  
25 Q. Okay. Are you aware that from 1969

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1 to 1985, American Tobacco's name was changed to  
2 American Brands?

3 A. Yes.

4 Q. Were you an American Brands  
5 employee during that time or an American Tobacco  
6 employee during that time?

7 A. Consider ourself American Tobacco.  
8 We were a division of American Brands.

9 Q. From 1969 to 1985?

10 A. 1985, yeah.

11 Q. 1969 to 1985, you considered  
12 yourself an employee of American Tobacco, a  
13 subsidiary of American Brands?

14 A. We weren't a subsidiary. They  
15 called us a division -- of Brands.

16 Q. During the time period you were  
17 with the company, did you ever have any contact  
18 with Gallahers?

19 A. Yes.

20 Q. Okay. What was the extent of your  
21 contact with Gallahers?

22 A. Gallaher was interested in using an  
23 expanded tobacco process of ours, and they sent  
24 people over to see what we were doing and see  
25 about implementing it.

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1                   On several occasions over the  
2 years, there would be a visiting scientist  
3 attending a conference, would stop through for a  
4 visit.

5           Q.       Did Gallahers have research  
6 facilities?

7                   MR. WALLACE: Just for the record,  
8 Mr. O'Fallon, it's "Gallagher." There's no "S" on  
9 it.

10          Q.       Okay. Did Gallagher have a research  
11 facility?

12          A.       Yes, they did.

13          Q.       Where were those research  
14 facilities located?

15          A.       In two places; one succeeded the  
16 other. I believe one was at Henry Street in  
17 Belfast; later to be moved to -- out in the  
18 country somewhere and it was called Lasnafillan,  
19 and don't ask me how to spell it.

20          Q.       L-A-S-N-A-F-I-L-L-A-N.

21                   And the latter research facility  
22 was also in Ireland?

23          A.       Yes, it was.

24          Q.       Was it still in Northern Ireland?

25          A.       Yes, it was.

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1 Q. It was never down in the Republic  
2 of Ireland?

3 A. No.

4 Q. Did any of your scientists ever  
5 visit those research facilities?

6 A. Other than whoever was head of  
7 research and development or some other VIP -- no,  
8 I don't think so.

9 Q. Did the head of research and  
10 development have interaction with those  
11 facilities?

12 MR. WALLACE: Objection, vague and  
13 ambiguous.

14 The head of what R&D facility and  
15 what facilities?

16 Q. Do you understand my question, sir?

17 A. I think so, but if you want to  
18 restate it, go ahead.

19 Q. Well, I don't need to. If you  
20 understand it, why don't you answer it.

21 A. I think they had some, but we were  
22 two pretty much independent groups.

23 Q. What type of research and  
24 development was done in Ireland by Gallaher?

25 A. I don't know the full extent of  
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1 what they had. They certainly had the same type  
2 of things that we did as far as chemical research.

3 Q. Did they have a biological research  
4 division?

5 A. I think they did for awhile, and  
6 then somewhere, they -- they canceled that  
7 operation.

8 Q. Do you know what time period they  
9 had that operation?

10 MR. WALLACE: Just a second,  
11 Byron. I object to this whole line of questioning  
12 as beyond the scope of the Notice.

13 MR. O'FALLON: Object away.

14 MR. WALLACE: You can answer.

15 A. I can't give you any dates.

16 Q. Why don't you give me an  
17 approximation.

18 A. I would want to believe that that  
19 program was disbanded by maybe 1980, and that's  
20 the best I can do.

21 Q. Do you know when that program  
22 started? Do you know how long they had had those  
23 biological research facilities?

24 A. No.

25 Q. Do you know what kinds of

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1 biological research they did?

2 A. Don't know that either.

3 Q. Do you know whether they did any  
4 animal testing?

5 A. I certainly don't.

6 Q. Would copies of reports of research  
7 done at Gallaher be sent to or be available to the  
8 research department at American Tobacco?

9 A. Not to my knowledge.

10 Q. Did you ever check on them?

11 A. I never went to look and ask "Is  
12 there a report," but no, I never saw any.

13 Q. Did you have a library section for  
14 the research facility?

15 A. Yes, we did.

16 MR. WALLACE: Are we now talking  
17 about The American Tobacco Company, Mr. O'Fallon,  
18 or are we talking about Gallaher?

19 MR. O'FALLON: Talking about The  
20 American Tobacco Company, sir.

21 MR. WALLACE: Thank you.

22 A. Okay. Yes, we did.

23 Q. And what was typically sent to the  
24 research facility -- or to the library facility at  
25 the research center?

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1           A.       Well, it was like all libraries,  
2 they had a lot of different periodicals, contacted  
3 libraries around the country, all kinds of  
4 information in journals, books on chemistry and  
5 different things. They would have received any --  
6 we had a -- the same thing that libraries do.

7           Q.       Would they get copies of all the  
8 formal reports done by the research department of  
9 American Tobacco?

10          A.       No, that went to a different group  
11 called "Files and Records."

12          Q.       So files and records kept copies of  
13 all the research reports?

14          A.       Yes, to the extent that maybe a  
15 report was bigger or fit with some subject, the  
16 library might pick that up and catalog it.

17          Q.       Was there any on-line computer  
18 access to the various files and records and  
19 reports?

20          A.       No.

21          Q.       It was all a manual system?

22          A.       Yes, sir.

23          Q.       Did you ever have a computer  
24 network system between American Tobacco and any of  
25 the other subsidiaries or companies, such as

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1 American Brands?  
2 A. No.  
3 Q. Do you find that a little odd?  
4 A. No.  
5 Q. Did you have access to computers in  
6 your own facility?  
7 A. Sure.  
8 Q. Did you have a computer on your  
9 desk?  
10 A. Nope.  
11 Q. Did most of your scientists have  
12 computers on their desks?  
13 A. Nope.  
14 Q. Do you know whether the files and  
15 records department had reports from Gallaher and  
16 their research department?  
17 MR. WALLACE: Objection. As to  
18 what period of time? It's vague.  
19 MR. O'FALLON: Any period of time.  
20 THE WITNESS: Any period?  
21 MR. WALLACE: That's broad.  
22 MR. O'FALLON: Not for me, it  
23 isn't.  
24 MR. WALLACE: Mr. O'Fallon, I don't  
25 think the commentary is necessary in the  
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1 objections. I am here to make objections, I'm  
2 entitled to do that. I simply stated my objection  
3 for the record.

4 A. Well, certainly, there was -- if  
5 any correspondence came in, it would be in central  
6 files. If anybody shared specifications, that  
7 type of thing would be there, but we had no  
8 routine exchange of reports or anything like that  
9 that would be there.

10 Q. Did American Brands have any other  
11 research facilities?

12 MR. WALLACE: Objection. I think  
13 that's a mischaracterization of his testimony to  
14 this point.

15 A. The only two facilities under the  
16 Brands structure that I know of were at the  
17 Bermuda Hundred complex and in Ireland. If any of  
18 the other subsidiaries had that, I was certainly  
19 not aware of that.

20 Q. At least as far as smoking and  
21 health or smoking-related research, the only two  
22 facilities that American Brands had were the  
23 Ireland facility and the facility of Bermuda One  
24 Hundred?

25 MR. WALLACE: Mr. O'Fallon,  
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1 objection. I think again that mischaracterizes  
2 his testimony. You've talked about research  
3 facilities operated, or he has, by The American  
4 Tobacco Company and by Gallaher. There's been no  
5 testimony to this point about research facilities  
6 operated by American Tobacco.

7 MR. O'FALLON: Do you understand  
8 that in this litigation, we have no speaking  
9 objections. Are you aware of that?

10 MR. WALLACE: Yes, I understand  
11 that, sir. I have read the transcripts.

12 MR. O'FALLON: I realize you're  
13 real new to this.

14 MR. WALLACE: I'm not real new to  
15 anything, sir.

16 MR. O'FALLON: Okay.

17 MR. WALLACE: I've stated my  
18 objection, and again, I reiterate that I do not  
19 need any commentary upon it, nor do I think the  
20 order --

21 MR. O'FALLON: I don't need your  
22 commentary either, sir.

23 MR. WALLACE: I'm entitled to make  
24 objections, sir, and that's what I'm doing.

25 MR. O'FALLON: You're not

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1     entitled --

2                     MR. WALLACE:   Pursuant to the order  
3     of March 20, 1996.

4                     MR. O'FALLON:   You're not entitled  
5     to make speaking objections.

6                     MR. WALLACE:   I'm aware of what the  
7     requirements are, Mr. O'Fallon.

8                     MR. O'FALLON:   Please try to comply  
9     with them.

10                    MR. WALLACE:   I believe I am, sir.

11                    MR. O'FALLON:   Once again --

12                    THE WITNESS:   Tell me what once you  
13     have it.

14                    Q.     It's my understanding that the  
15     only two research facilities under the aegis of  
16     American Brands were the Bermuda Hundred facility  
17     and the facilities in Northern Ireland; correct?

18                    A.     I would say yes.

19                    Q.     And to the best of your knowledge,  
20     there were no other research facilities under the  
21     aegis of American Brands; correct?

22                    A.     Relating to tobacco, no.

23                    Q.     Do you know who the head of the  
24     facilities in Ireland -- the research facilities  
25     in Ireland was during any time that you were at

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1 American Tobacco?

2 MR. WALLACE: Objection, beyond the  
3 scope of the deposition.

4 THE WITNESS: Any time; is that  
5 what you're asking me?

6 MR. O'FALLON: Yeah, sure.

7 A. One was -- the name would be  
8 Richard Boxall, and one would have been Birdie  
9 O'Neill, and I'm drawing blanks after that.

10 Q. When was Richard Boxall the  
11 director; do you remember -- and again, I'm not  
12 asking you for precision.

13 A. Somewhere in the early '80s --  
14 maybe mid '80s.

15 Q. And how about Mr. O'Neill?

16 A. He took over after Boxall died, so  
17 maybe mid '80s on, or something like that.

18 Q. Did you have contact with those two  
19 gentlemen?

20 A. Only to the extent that they came  
21 through for a tour at American facilities.

22 Q. Do you know who those gentlemen  
23 reported to?

24 A. I don't know the reporting  
25 structure.

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1 Q. Was there someone at American  
2 Brands who oversaw the Ireland facilities?

3 A. Not to my knowledge.

4 Q. Do you know who? I'm sorry, go  
5 ahead.

6 A. I believe Gallaher was treated as a  
7 wholly owned subsidiary and had their own board.

8 Q. And then why do you say that?

9 A. Because I think I recall them  
10 having a president and a chairman, or something  
11 like that, who was a member of the Brands board.

12 Q. Do you know whether you can buy  
13 Gallaher stock?

14 MR. WALLACE: Just a moment.  
15 Mr. O'Fallon, may I have a continuing objection to  
16 the line of questioning relating to Gallaher, or  
17 would you like me to state my objection after each  
18 question?

19 MR. O'FALLON: Why don't you just  
20 keep a continuing objection.

21 MR. WALLACE: Thank you.

22 A. I don't know. I would doubt it,  
23 since it's a part of Brands, but I have no  
24 knowledge of that.

25 Q. So Gallaher, just like American  
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1 Tobacco, is a company you can only buy stock in by  
2 buying stock in American Brands; correct?

3 MR. WALLACE: Asked for it --  
4 never mind, withdrawn.

5 THE WITNESS: Say it again.  
6 BY MR. O'FALLON:

7 Q. Is it your understanding that the  
8 only way to buy stock in Gallaher, and again,  
9 we're going to talk about before the buyout, is  
10 what I'm talking about, so before 1994, is it your  
11 understanding that from approximately 1970 to  
12 1994, the only way to buy stock in either Gallaher  
13 or American Tobacco was to buy stock in American  
14 Brands?

15 A. I know it was that way with  
16 American Tobacco. I'm not sure about Gallaher.

17 Q. Now, concerning the research you  
18 did from 1965 and to 1994, including the research  
19 you oversaw, did lawyers direct that research?

20 A. No.

21 Q. Were lawyers copied on all the  
22 research?

23 A. No.

24 Q. Were lawyers actively involved in  
25 the research?

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1 A. No.

2 Q. Were lawyers involved in any way in  
3 the research?

4 A. Not to my knowledge.

5 Q. During the time period that you  
6 have had a biological division, do you know what  
7 kind of work was done in that biological division?

8 A. Reading literature.

9 Q. Is that it?

10 A. That's about all I remember.

11 Q. So, it would be your testimony that  
12 at no time during your tenure from 1965 to 1994  
13 did American Tobacco Company or its parent,  
14 American Brands, ever undertake biological  
15 research in the United States; correct?

16 MR. WALLACE: Objection, asked and  
17 answered.

18 A. We did not have any in-house  
19 biological research program at the American  
20 Tobacco research facility.

21 Q. Did you fund external biological  
22 research other than through The Council for  
23 Tobacco Research or its predecessor, The Tobacco  
24 Institute Research Committee?

25 A. We had a program at the Medical  
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1 College of Virginia that had been funded for many  
2 years, and it was in the department of  
3 pharmacology.

4 Q. Was Mr. Burke or Dr. Burke part of  
5 the Medical College of Virginia at one point in  
6 time?

7 A. Yes, he was.

8 Q. When did he leave the Medical  
9 College of Virginia?

10 A. Whenever he officially joined  
11 American Tobacco. I'm not exactly sure --  
12 '95ish -- I mean, excuse me -- '65ish.

13 Q. So, in 1965 -- before 1965, was he  
14 doing biological research?

15 A. I don't really know what he was  
16 doing.

17 Q. In any event, it's your testimony  
18 that once he came to American Tobacco, he stopped  
19 doing any active research; correct?

20 MR. WALLACE: Objection. I don't  
21 think there's been any -- that misrepresents his  
22 testimony.

23 A. Well, I don't know what active  
24 research he was doing at the medical college to  
25 stop, so there were certainly plans to set up a

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1 facility, and he was to direct that.

2 Q. Why wasn't that done?

3 A. Well, I guess, as I understand it,  
4 for several reasons.

5 One, we had been a chemical  
6 laboratory for years, and that was our expertise,  
7 and then we were going to have a small corner of  
8 one floor set up to do this other biological work,  
9 and I think it was just a reallocation of  
10 resources and the recognition that these resources  
11 wouldn't be used to their fullest trying to ramp  
12 up a new staff to develop expertise, and a  
13 decision was made somewhere in late '66 or early  
14 '67, I would put it, that before that corner of  
15 the building was completely finished that, no,  
16 we're not going to do that here. There's not  
17 enough -- there's not enough room for staff to do  
18 the program that apparently Dr. Burke had talked  
19 about, and then that we just gave the money away  
20 to Council of Tobacco Research or Medical College  
21 of Virginia or whatever and let people that are  
22 trained in that field go ahead and do that, and I  
23 think that was partially coupled with the -- maybe  
24 the climate had changed. There were some thoughts  
25 of, "Well, nobody would believe what was done

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1       anyway," so why try and carry that out here on a  
2       very limited scale, so it never came into being.

3               Q.       When did Dr. Burke leave American  
4       Tobacco?

5               A.       Gee, somewhere around 1970 to '72.  
6       I'm not exactly sure.

7               Q.       From 1965 to 1970 or 1972, did  
8       Dr. Burke continue to direct the research at the  
9       Medical College of Virginia?

10              A.       Not to my knowledge.

11              Q.       Was the work Dr. Burke did from  
12       1965 to 1970 or '72 whenever he left, to the best  
13       of your knowledge, directed by attorneys?

14              A.       Attorneys; no.

15              Q.       Was it done for attorneys?

16              A.       Not to my knowledge.

17              Q.       Was it sent to attorneys?

18              A.       Well, I'm going to say, I don't  
19       think so, but I wasn't at that time copied to  
20       know.

21              Q.       I would like to turn for a second  
22       to the first notice category in the Notice of  
23       Deposition, which is "Public Statements Concerning  
24       Health."

25              A.       Uh-huh, okay.

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1 Q. Would you agree that when a company  
2 makes a public statement related to health effects  
3 of smoking and addiction, it has a duty and an  
4 obligation to be truthful in those statements?

5 MR. WALLACE: Objection, calls for  
6 a legal conclusion.

7 A. I think a company has -- has a  
8 duty, sure.

9 Q. You would agree the company  
10 shouldn't make false statements; correct?

11 A. That's true.

12 Q. A company shouldn't make misleading  
13 statements, correct?

14 A. That's true.

15 Q. Nor should a company withhold  
16 important information it has concerning the health  
17 effects of its own products; correct?

18 A. Sure.

19 Q. Especially if that company has  
20 information indicating there may be dangerous  
21 substances in their products; correct?

22 A. Sure.

23 Q. And if American Tobacco had  
24 information that its products were dangerous,  
25 American Tobacco would certainly disclose that

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1 information, regardless of what its competitors  
2 did; correct?

3 MR. WALLACE: Objection as to  
4 form. You may answer.

5 A. If we have that information and  
6 it's not known, that would be an obligation, yes.

7 Q. Now, you would agree that when a  
8 company makes a public statement, it hopes the  
9 public will hear that statement; correct?

10 A. I would agree that's the purpose  
11 for a statement.

12 Q. And you hope that the public will  
13 consider whatever statement you had to make as a  
14 company; correct?

15 A. I would think so.

16 Q. And you would hope that the public  
17 would rely on those statements; correct?

18 A. Yes.

19 Q. And that certainly applies to  
20 statements a company makes about the dangers of  
21 its own product; correct?

22 A. Sure.

23 Q. Certainly, the public has the right  
24 to rely that when a company makes a statement  
25 concerning the dangers of its own products, the

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1 company is going to be telling it the truth;  
2 correct?

3 A. Right.

4 Q. You would also agree that American  
5 Tobacco cannot sell its products illegally;  
6 correct?

7 A. That's correct.

8 Q. That is, you can't market your  
9 products by making misleading statements; correct?

10 MR. WALLACE: Objection, calls for  
11 a legal conclusion.

12 THE WITNESS: Say again.

13 Q. Sure. That is, you can't market  
14 your products by making misleading statements,  
15 correct?

16 MR. WALLACE: Objection as to form,  
17 calls for a legal conclusion.

18 A. We have to sell our product through  
19 whatever legal means we have, and if that's -- we  
20 have to tell about our product, yes.

21 Q. And that would include in order to  
22 do -- strike that.

23 And that would include in order to  
24 sell your product legally, you would have to fully  
25 disclose to the public everything you knew about

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1 that product that may endanger the public;  
2 correct?

3 MR. WALLACE: Objection as to form,  
4 objection to the extent it calls for a legal  
5 conclusion.

6 You may answer.

7 THE WITNESS: Say it again. I lost  
8 track here.

9 MR. O'FALLON: Why don't you read  
10 it back.

11 (Record read.)

12 MR. O'FALLON: I'll restate it.

13 BY MR. O'FALLON:

14 Q. In order to sell your product  
15 legally, you would have to disclose to the public  
16 everything you knew concerning the dangers of that  
17 product; correct?

18 MR. WALLACE: Objection as to form,  
19 objection to the extent it calls for a legal  
20 conclusion.

21 You may answer, Mr. Price.

22 A. I don't know that you have to  
23 disclose everything, because certainly, the case  
24 of smoking, that product is known to be one that  
25 has some risk associated with it.

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1 Q. But you understand that the tobacco  
2 industry has for the last 40 years denied that the  
3 case against smoking has been proven; correct?

4 MR. WALLACE: Objection  
5 argumentative. Also, Mr. Price is here to testify  
6 on behalf of the American Tobacco Company or for  
7 it, not the entire tobacco industry, Mr. O'Fallon.

8 THE COURT REPORTER: Could you slow  
9 down a little?

10 MR. WALLACE: I can. I'm sorry.  
11 Objection as to form and objection also to just  
12 stating that Mr. -- a point of clarification that  
13 Mr. Price is here to testify on behalf of the  
14 American Tobacco Company and not the entire  
15 tobacco industry, whatever that may be.  
16 BY MR. O'FALLON:

17 Q. You understand what the American  
18 Tobacco industry is, don't you, sir?

19 A. American Tobacco industry is a  
20 group of several companies, yes.

21 Q. I mean, you've worked in the  
22 American Tobacco industry for over 30 years,  
23 right?

24 A. I worked for The American Tobacco  
25 Company, yes.

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1 Q. Which is part of the American  
2 Tobacco industry, right?

3 A. (Nodding.)

4 Q. And there isn't really any  
5 confusion in your mind when I use the term "the  
6 tobacco industry," is there, sir?

7 A. I think we recognize now that it's  
8 a group of American companies.

9 Q. And you understand that the  
10 American Tobacco industry has for the last 40  
11 years contended that the case against smoking has  
12 not been proven; correct?

13 A. I think that's true.

14 Q. You would agree that telling the  
15 public that the case against smoking has not been  
16 proven or that it has not been proven that your  
17 products cause disease when you, in fact, believe  
18 it had been proven would be misleading; correct?

19 A. The fact -- state that again.

20 Q. Sure. Why don't I restate it. You  
21 would agree that telling the public that it hasn't  
22 been proven that cigarettes cause disease would be  
23 misleading if, in fact, your own company believed  
24 that it had been proven that cigarettes cause  
25 disease; correct?

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1           A.       I know I'm losing my train of  
2       thought.

3                   MR. WALLACE: Tell you what,  
4       Mr. O'Fallon, is it all right, perhaps -- we have  
5       been going just about an hour. It might help if  
6       we just take a few minutes or -- certainly, I  
7       don't want to leave with a question pending,  
8       but --

9                   MR. O'FALLON: Right.  
10                  Why don't we -- well, we can take a  
11       break as soon as the question is answered.

12                  MR. WALLACE: Okay. Why don't you  
13       do your best right now, Byron.

14                  MR. O'FALLON: Why don't we have  
15       the question reread so that the record is clear.  
16                  (Record read.)

17                A.       Yes.

18                  MR. O'FALLON: Why don't we take a  
19       break.

20                  (Recess taken.)

21                Q.       Were you aware, Mr. Price, that in  
22       1954, the industry, including American Tobacco  
23       Company, issued a statement that they called a  
24       Frank Statement to cigarette smokers?

25                A.       Yes, I'm aware of that happening.

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1 Q. Good enough. I'm going to hand you  
2 a document that's been previously marked in this  
3 litigation as Sistad Exhibit Number 2 entitled "A  
4 Frank Statement to Cigarette Smokers."

5 Have you seen this type of ad  
6 before?

7 A. I believe I had -- have, but it's  
8 been some years.

9 Q. Okay. Do you understand at this  
10 time that the cigarette industry basically stated  
11 that they accept an interest in people's health as  
12 a basic responsibility, paramount to every other  
13 consideration in their business?

14 MR. WALLACE: Objection. The  
15 document speaks for itself.

16 Q. I'm looking on the second column,  
17 the first paragraph after number four -- do you  
18 see there?

19 A. After number four?

20 Q. Right.

21 MR. WALLACE: Hold on.

22 THE WITNESS: Okay.

23 MR. WALLACE: Is there a question  
24 pending, Mr. O'Fallon? Are you asking him if  
25 you've read that correctly?

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1 MR. O'FALLON: Is that an  
2 objection, sir?  
3 MR. WALLACE: I'm seeking  
4 clarification, sir.  
5 MR. O'FALLON: Is that an  
6 objection?  
7 MR. WALLACE: I'm seeking  
8 clarification, sir.  
9 MR. O'FALLON: Is that an  
10 objection?  
11 MR. WALLACE: Is there a question  
12 pending, and if so, what is it?  
13 May I have the last question read  
14 back, Madam reporter, please?  
15 (Record read.)  
16 THE WITNESS: Okay.  
17 MR. WALLACE: Byron, first of all,  
18 I would like you to take an opportunity to review  
19 this document before you answer any of his  
20 questions.  
21 THE WITNESS: I'm trying to read  
22 where he told me there.  
23 MR. WALLACE: Take your time. Read  
24 the entire thing, put it in context, unless Mr.  
25 O'Fallon -- I think he pointed you to a specific  
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1 provision.

2 MR. O'FALLON: Sir, who is  
3 conducting this deposition, you or me?

4 MR. WALLACE: I believe you are,  
5 Mr. O'Fallon.

6 MR. O'FALLON: Thank you.

7 MR. WALLACE: I'm defending the  
8 deposition.

9 MR. O'FALLON: Well, why don't you  
10 just limit your comments. We have a protocol  
11 here, and if you've got a problem, let's just  
12 state it in terms of an objection.

13 BY MR. O'FALLON:

14 Q. Now, to go back before your counsel  
15 so rudely interrupted, I was directing you, as I  
16 believe you indicated you wanted, to the  
17 statement, it's in the second column --

18 A. Uh-huh.

19 Q. -- under the paragraph four -- it's  
20 the first full paragraph under that paragraph  
21 that's been numbered four?

22 Do you see that there?

23 A. It begins, "We accept"?

24 Q. Right.

25 A. Okay.

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1 Q. And the document states, quote, "We  
2 accept an interest in people's health as a basic  
3 responsibility paramount to every --

4 THE COURT REPORTER: I'm sorry.  
5 You'll have to slow down a little bit.

6 Q. The document states, quote, "We  
7 accept an interest in people's health as a basic  
8 responsibility paramount to every other  
9 consideration in our business."

10 Do you see that?

11 A. Yes, I do.

12 Q. And do you see that under the  
13 sponsors of this statement is listed The American  
14 Tobacco Company, Inc.?

15 A. Yes, it is.

16 Q. Including their president, Paul  
17 H. Hahn -- M. Hahn?

18 A. Yes. Yes, I see that.

19 Q. Now, one of the purposes of this  
20 statement was for the industry to try to convey to  
21 the public that they didn't believe that their  
22 products caused any problems as far as health;  
23 correct?

24 MR. WALLACE: Objection,  
25 argumentative, vague and lack of foundation.

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1           A.       Well, I think in the first sentence  
2 back here, it says, "Experiments give wide  
3 publicity to theories that in some way linked to  
4 hum -- linked to lung cancer in human beings."  
5 That sort of deals with it, I think.

6           Q.       And what's the statement after  
7 that, sir? Why don't you read that?

8           A.       "Although conducted by doctors in  
9 professional standings, these experiments are not  
10 regarded as conclusive in the field of cancer  
11 research."

12          Q.       And specifically, why don't you  
13 read me the sentence after the sentence where the  
14 cigarette companies accept a basic responsibility?

15          A.       You jumped on me there. Are you  
16 going back over to the other column?

17          Q.       Sure, going now back to the second  
18 column. Why don't you read me the statement  
19 after, quote, "We accept an interest in people's  
20 health as a basic responsibility, paramount to  
21 every other consideration in our business"?

22          A.       It says, "We believe these  
23 products -- we believe the products we make are  
24 not injurious to health."

25          Q.       Now, you would agree that a person

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1 reading that statement could reasonably believe  
2 that the industry had just told them that  
3 cigarettes were not injurious; correct?

4 A. It says what we believe right  
5 there, yes.

6 Q. And since you've also -- I'm sorry?

7 A. It just says what it does. I don't  
8 know what all the other implications that people  
9 reading it might take, but --

10 Q. Well, you would agree that it's  
11 reasonable for someone who reads that statement to  
12 believe that they have just been told by the  
13 cigarette companies that cigarettes aren't  
14 dangerous; correct?

15 MR. WALLACE: Objection, asked and  
16 answered, also misrepresents the prior testimony.  
17 The sentence you asked Mr. Price to read does not  
18 contain the word "dangerous," Mr. O'Fallon.

19 MR. O'FALLON: Is that an  
20 objection, sir?

21 MR. WALLACE: Yes, it is. You've  
22 mischaracterized the testimony, sir.

23 MR. O'FALLON: Would you read back  
24 my question, please?

25 (Record read.)

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1 MR. WALLACE: Also calls for  
2 speculation.

3 A. It just says, "injurious to  
4 health." I don't know about "dangerous."

5 Q. Well, do you think "injurious to  
6 health" and "dangerous" are somewhat synonymous?

7 A. Might need another judgment  
8 decision on "dangerous."

9 Q. You would agree that it would be  
10 reasonable for someone looking at that, a person  
11 who just picks this up one day in the newspaper  
12 where it was published throughout the country to  
13 look at it and say, "Appears to me that the  
14 cigarette companies are telling me that their  
15 products aren't dangerous"; correct?

16 MR. WALLACE: Objection, calls for  
17 speculation, also misrepresents the sentence  
18 you've asked him to read.

19 A. Someone picks that up, they might  
20 take that as the idea that, yes, they are not  
21 injurious, and others might look at it with utter  
22 disdain; I don't know.

23 Q. In addition, the companies all  
24 pledged "aid and assistance to the research effort  
25 into all phases of tobacco use and health";

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1 correct?  
2 A. Where are you reading that, sir?  
3 Q. Big paragraph one there on the  
4 third column?  
5 A. "We are pledging"?  
6 Q. Right.  
7 A. Okay.  
8 Q. It says, "We are pledging aid and  
9 assistance to the research effort into all phases  
10 of tobacco use and health"; correct?  
11 A. That's what it says, yes.  
12 Q. It says, "This joint financial aid  
13 will, of course, be in addition to what is already  
14 being contributed by individual companies";  
15 correct?  
16 A. Yes, sir.  
17 Q. Number two states, "For this  
18 purpose, we are establishing a joint industry  
19 group consisting initially of the undersigned.  
20 This group will be known as Tobacco Industry  
21 Research Committee"; correct?  
22 A. Yes.  
23 Q. Number three, it says, "In charge  
24 of the research activities of this committee will  
25 be a scientist of unimpeachable integrity and  
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1 national reputa"; correct?

2 A. Yes.

3 Q. It states, "In addition, there will  
4 be an advisory board of scientists disinterested  
5 in the cigarette industry"; correct?

6 A. Yes, sir.

7 Q. Now, the American Tobacco Company  
8 played a key role in forming TIRC, correct, the  
9 Tobacco Industry Research Council?

10 MR. WALLACE: Objection, assumes  
11 facts not in evidence, lack of foundation -- also  
12 vague.

13 A. I don't know the complete role The  
14 American Tobacco Company played. As a person  
15 joining the company in '65, I certainly was aware  
16 that Paul Hahn was one of the leaders.

17 Other than that, I have to let it  
18 go.

19 MR. O'FALLON: I'm asking to be  
20 marked as Plaintiffs' Exhibit 1126 a document  
21 Bates stamped numbered MNAT 00724279 through 280  
22 (Plaintiffs' Exhibit 1126 was  
23 marked for identification.)

24 Q. Do you recognize 1126?

25 A. This one -- okay. That's numbered  
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1 that way.

2 Q. Have you seen this document  
3 previously?

4 A. Not until we looked at it maybe  
5 some day last week.

6 Q. And when you say "we," you're  
7 talking about you and your attorneys; correct?

8 A. Yes, sir.

9 Q. This is a letter from the president  
10 of R.J. Reynolds to Mr. Paul Hahn, who is the  
11 president of American Tobacco Company; correct?

12 A. Yes.

13 Q. Mr. Darr states to Mr. Hahn, quote,  
14 "You took a bold and courageous action in December  
15 1953 when you called a meeting" -- "called for a  
16 meeting of manufacturers and other industry groups  
17 to discuss ways and means of presenting a united  
18 front against the claims that were being made that  
19 cigarette smoking causes lung cancer"; correct?

20 A. That's correct.

21 Q. It states, "The formation of the  
22 Tobacco Industry Research Committee was the  
23 result"; correct?

24 A. Uh-huh.

25 Q. So, apparently, Mr. Hahn and

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1 American Tobacco Company were instrumental in  
2 forming the TIRC; correct?

3 MR. WALLACE: The document speaks  
4 for itself.

5 THE WITNESS: That's -- certainly,  
6 yes, that's what it's saying.

7 Q. Mr. Darr goes on to state, "There  
8 is absolutely no question in my mind that if this  
9 committee had not been formed, the cigarette  
10 industry would now have been in a deplorable  
11 position"; correct?

12 A. That's what it says.

13 Q. He then concludes that, "In other  
14 words, the TIRC has been a successful defense  
15 operation"; correct?

16 A. That's what it says.

17 Q. Now, when you took out the ads or  
18 when American Tobacco took out the ad along with  
19 the other companies in 1954, you didn't tell the  
20 public that you were forming TIRC as a defensive  
21 operation, did you, sir?

22 A. No. It says, "The group to be  
23 known as Tobacco Industry Research Committee for  
24 the purposes of having a joint industry group."

25 MR. WALLACE: I'm going to also  
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1 request, Mr. O'Fallon, that to the extent you have  
2 any more questions about the Frank Statement that  
3 are not restricted to determining whether you've  
4 read something correctly, that you give Mr. Price  
5 the opportunity to read that document before you  
6 continue to ask him questions about it.

7 MR. O'FALLON: Is that an  
8 objection, sir?

9 MR. WALLACE: Yes, it is, sir.  
10 It's on the record.

11 MR. O'FALLON: What rule is  
12 evidence is that under?

13 MR. WALLACE: I'm not going to  
14 engage in any colloquy, Mr. O'Fallon. What I'm  
15 talking about is basic courtesy and fairness.

16 MR. O'FALLON: My point, sir, is  
17 that I would wish you would not engage in any  
18 colloquy at all. The orders of this court require  
19 you to state "objection" and the basis of your  
20 objection. If you have an objection, legitimate  
21 or not, state it and give me the basis.

22 MR. WALLACE: I have, sir. The  
23 basis of the objection is that I consider it  
24 unfair to continue to inquire of this witness  
25 about what one might draw from the Frank Statement

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1 without giving the gentleman an opportunity to  
2 read the document that you have confronted with  
3 him here.

4 Q. Sir, did you review the Frank  
5 Statement prior to this deposition?

6 A. Not in real detail.

7 Q. But you did have it, didn't you,  
8 sir?

9 A. Yes.

10 Q. It was one of the documents shown  
11 to you by your attorneys; correct?

12 A. Yes, it was.

13 Q. Did they ever give you the  
14 opportunity to review it in whatever detail you  
15 needed to review it in?

16 A. We --

17 MR. WALLACE: I'm going to object.  
18 Hold on Byron. I'm instructing the witness not to  
19 answer any of the questions. You're seeking now  
20 to pry into privileged communications and course  
21 of conduct, and I instruct the witness not to  
22 answer any of the questions.

23 MR. O'FALLON: I'm seeking to show  
24 your objection is foolish, sir --

25 MR. WALLACE: The communications he  
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1 may have had --

2 MR. O'FALLON: -- and I think I  
3 have done a pretty good job of that. Fact of the  
4 matter is --

5 MR. WALLACE: Hold on, Mr.  
6 O'Fallon.

7 MR. O'FALLON: The fact of the  
8 matter is, you have had the opportunity to review  
9 this document prior to today; correct, with your  
10 attorney?

11 MR. WALLACE: Mr. O'Fallon, you  
12 certainly are here to conduct a deposition. I  
13 have read nothing that vests you with judicial  
14 authority in this case to also rule on objections  
15 that are not --

16 MR. O'FALLON: Sir, I'm making a  
17 record. That's what we do here, instead of just  
18 making unbased statements.

19 Q. Now, the fact of the matter is, you  
20 have had an opportunity to look at this document,  
21 correct, prior to this deposition?

22 THE WITNESS: Am I to answer?

23 MR. WALLACE: I don't know whether  
24 you have or not. You can -- if you can answer his  
25 question, answer it, sir.

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1           A.       Yes, we looked at it -- I looked at  
2     it.

3           Q.       It would certainly be reasonable  
4     for someone reading this document to conclude that  
5     what the tobacco industry was trying to do when it  
6     formed the Tobacco Industry Research Committee was  
7     to form an objective, unbiased group; correct?

8           A.       Yes, sir.

9           MR. WALLACE:   Objection, calls for  
10   speculation.

11          Q.       And yet Mr. Darr's statement would  
12   indicate that, in fact, what the TIRC was was a  
13   successful defensive operation for the tobacco  
14   industry; correct?

15          A.       Well, that's what his words are  
16   right there.

17          Q.       Would you agree that by 1958, it  
18   was pretty much agreed that the causal link  
19   between cigarette smoking and lung cancer had been  
20   established?

21          A.       There had certainly been a causal  
22   link established by the surgeon general as  
23   "causation" is defined by him.

24          Q.       By 1958, I'm speaking.

25          A.       Excuse me, '58, I didn't hear your  
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1 number.

2 Q. I'm sorry. And that's why.

3 A. Yeah.

4 Q. Because the surgeon general reports  
5 in 1954.

6 How about by 1958, do you know  
7 whether at that point the industry had at least  
8 concluded that the causal connection between  
9 cigarette smoking and lung cancer had been proven?

10 A. I don't -- I don't know what all  
11 the industry had said, but I believe the American  
12 Tobacco's position was that, no, it had not been  
13 proven.

14 Q. Okay. I would like to show you a  
15 document that's been previously marked in this  
16 litigation as Plaintiffs' Exhibit 304.

17 This is a document that's been  
18 produced by the British-American Tobacco Company  
19 Bates stamp number 105408490 through 499, and it's  
20 entitled at the top "Report on Visit to USA and  
21 Canada, 17, April to 12th, May, 1958", correct?

22 A. Okay.

23 Q. British-American Tobacco is now one  
24 of your employers; correct?

25 A. It is now, yes.

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1 Q. And you will see on the second page  
2 of the document Bates stamp last three numbers 491  
3 that it lists the itinerary that these gentlemen  
4 followed; correct?

5 A. Okay.

6 Q. And you'll see on the 17th of  
7 April, they apparently visited The American  
8 Tobacco Company in Richmond; correct?

9 A. Right.

10 Q. And met with Mr. H.R. -- is that  
11 Hamron?

12 A. Ham -- Hamner.

13 Q. Hamner. Mr. Harlan and Mr. Harlow;  
14 correct?

15 A. Yes.

16 Q. And do you know who those gentlemen  
17 were?

18 A. Well, all three of those people  
19 worked in the research and development of American  
20 Tobacco.

21 Q. They also met with the Medical  
22 College of Virginia and Professors Larsen and  
23 Haag, correct?

24 A. Yes, sir.

25 Q. And are those researchers who did  
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1 work on behalf of the American Tobacco Company?  
2 A. They were grantees, I guess is the  
3 word. They received money --  
4 Q. Okay.  
5 A. -- for work that they did.  
6 Q. Okay. And they were also an  
7 indication of four meetings with the TIRC,  
8 correct, the Tobacco Industry Research Committee?  
9 A. Down there if -- yes, okay.  
10 Q. The first one being April 28th;  
11 correct?  
12 A. Well -- April 28th, all right.  
13 Q. Then May 5th; correct?  
14 A. Industry -- I'm not sure that  
15 that's exactly the same, but maybe it is.  
16 Q. Did you know what the industry  
17 technical committee of the TIRC was?  
18 A. No.  
19 Q. It appears that the chairman of  
20 that was Mr. Hamner; correct?  
21 A. Well, that's what it says.  
22 Q. And again, he was an American  
23 Tobacco employee; correct?  
24 A. That's right.  
25 Q. Do you know who Mr. Hoyt and  
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1 Dr. Hockett were?  
2 A. I don't know Hoyt and Hockett.  
3 Q. And then on the 8th, there's listed  
4 another visit with the TIRC in New York; correct?  
5 A. Little and Hockett -- okay.  
6 Q. Uh-huh. And on the 10th, there's  
7 also listed a visit with the TIRC; correct?  
8 A. Okay.  
9 Q. And again, that's the organization  
10 that American Tobacco was instrumental in forming;  
11 correct?  
12 A. Yes, they were. The were certainly  
13 part of it.  
14 Q. Let's look on the third page of  
15 this document what has an Arabic number 2 at the  
16 top of it and has the last three Bates numbers of  
17 492.  
18 A. All right.  
19 Q. Are you on that page?  
20 A. All right.  
21 Q. Do you see the heading entitled,  
22 quote, "Causation," end quote, "of lung cancer"?  
23 A. All right.  
24 Q. The first sentence states, quote,  
25 "With one exception," parenthetical, "H.S.N.  
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1     Greene," end parenthetical, "the individuals whom  
2     we met believed that smoking causes lung cancer if  
3     by, quote, "causation," end quote, "We mean any  
4     chain of events which leads finally to lung cancer  
5     and which involves smoking as an indispensable  
6     link"; correct?

7             A.     That's what it says.

8             Q.     And again, among the individuals  
9     they met with were at least three individuals from  
10    the American Tobacco Company; correct?

11            A.     Right.

12            Q.     Did The American Tobacco Company  
13    ever take out an advertisement in 1958 or now or  
14    up until now that says "that smoking causes lung  
15    cancer if by 'causation,' we mean any chain of  
16    events which leads finally to lung cancer and  
17    which involves smoking as an indispensable link"?

18            A.     Offhand, I don't know.

19            Q.     You don't know of any such  
20    advertisement or statement as you sit here today;  
21    correct?

22            A.     No, I don't.

23            Q.     Let's also look at the page that at  
24    the top is page 8, but the bottom, the last four  
25    Bates numbers are 498.

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1 A. Page 8, you say?

2 Q. Yes.

3 A. Okay.

4 Q. Are you there?

5 A. Yep.

6 Q. Do you see the section entitled  
7 "Conclusions"?

8 A. Okay.

9 Q. It says, number one, "Although  
10 there remains some doubt as to the portion of the  
11 total lung cancer mortality which can fairly be  
12 attributed to smoking, scientific opinion in USA  
13 does not now seriously doubt that the statistical  
14 correlation is real and reflects a  
15 cause-and-effect relationship" correct?

16 A. That's what it said.

17 Q. Do you recall the industry taking  
18 out any ads in 1958 or thereafter that says there  
19 is no serious dispute in the scientific community  
20 concerning the cause-and-effect relationship  
21 between smoking and lung cancer?

22 MR. WALLACE: Objection, beyond the  
23 scope of the deposition. Mr. Price is here to  
24 speak on behalf of and for The American Tobacco  
25 Company, again, Mr. O'Fallon, and not the entire

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1 tobacco industry. It's beyond the scope.

2 MR. O'FALLON: Again, we can do  
3 without the speaking objection. "Beyond the  
4 scope" will do it.

5 Do you want that question read  
6 back?

7 THE WITNESS: Yeah, I've lost  
8 track.

9 MR. O'FALLON: Yeah, me, too. Long  
10 objections do that. Why don't we go ahead and  
11 read back.

12 (Record read.)

13 A. No, I don't recall that.

14 Q. Would you also look at page 5, the  
15 Bates number, last three numbers 495 at the bottom  
16 of the page.

17 A. 4 --

18 Q. Yeah, 495, page 5 at the top.

19 A. Oh, excuse me. I'm going  
20 backwards. Okay.

21 Q. That's my fault. Actually, I'll  
22 direct you to the middle of the page where it  
23 says, "Attitudes of U.S. industry to biological  
24 testing."

25 A. Okay.

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1 Q. Are you there?

2 A. Uh-huh.

3 Q. The first sentence states that,  
4 quote, "Liggett & Myers stayed out of TIRC  
5 originally because they doubted the sincerity of  
6 TIRC motives and believed that the organization  
7 was too unwieldy to work efficiently"; correct?

8 A. That reads correctly, yes.

9 Q. They state, quote, "They remain  
10 convinced that their misgivings were justified";  
11 correct?

12 A. Yes.

13 Q. They also state, quote, "In their  
14 opinion, TIRC has done little, if anything,  
15 constructive, the constantly reiterated," quote,  
16 "not proven," unquote, "statements in the face of  
17 mounting contrary evidence has thoroughly  
18 discredited TIRC and the SAB of TIRC is  
19 supporting, almost without exception, projects  
20 which are not related directly to smoking and lung  
21 cancer."

22 Do you see that statement?

23 A. Yes, I do.

24 Q. Did TIRC ever disclose that to the  
25 public that, in fact, they are supporting almost

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1 without exception projects which are not related  
2 directly to smoking and lung cancer?

3 MR. WALLACE: Objection.

4 THE WITNESS: Well, this is --

5 MR. WALLACE: Hold on. Hold on.

6 Objection.

7 Mr. O'Fallon, you continue to ask  
8 Mr. Price whether you have read things accurately,  
9 and then you want to discuss the document  
10 substantively.

11 I think, again, you should give him  
12 an opportunity, if he has already reviewed it,  
13 perhaps to rereview the document so that he can  
14 put these things in context, sir.

15 We have established that you read  
16 dramatically quite well, so I would request that  
17 you give him an opportunity to review these  
18 things.

19 Also, I would object to the lack of  
20 foundation. There has been no testimony to this  
21 point, sir, that Mr. Price knows anything about  
22 the founding of TIRC or what its functions were  
23 some seven years prior to joining the company.

24 MR. O'FALLON: Are you done?

25 MR. WALLACE: Yes, I am, sir.

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1 MR. O'FALLON: I'm really tired of  
2 your speaking objections. We get one more, we're  
3 going to the court.

4 Do you understand that?

5 MR. WALLACE: You'll do what you  
6 have to do, sir.

7 MR. O'FALLON: I certainly will.

8 MR. WALLACE: I'm sure you will.

9 MR. O'FALLON: Would you please  
10 read back my last question? Was it answered, or  
11 did the long colloquy once again interrupt it?

12 MR. O'FALLON: Do you get paid by  
13 the word?

14 MR. WALLACE: You know --  
15 perhaps -- never mind. Go ahead.

16 I don't think this is necessary,  
17 Mr. O'Fallon.

18 MR. O'FALLON: I don't think any of  
19 your speaking objections are necessary, sir.

20 MR. WALLACE: Nor, for that matter,  
21 are your inappropriate questions are particularly  
22 necessary or objectionable questions. You're  
23 doing what you need to do, I'm doing what I need  
24 to do to defend and preserve the record.

25 THE COURT REPORTER: Do you want  
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1 the record read?

2 MR. O'FALLON: Well, did we get an  
3 answer to the question before the interruption?

4 (Record read.)

5 MR. O'FALLON: Okay. Why don't we  
6 restate it for Mr. Price, and then we can get his  
7 answer.

8 (Record read.)

9 A. Okay. Well, first off, I think we  
10 all recognize this was long before my tenure with  
11 the company.

12 Second, I don't know whether there  
13 was some other disclosure done by TIRC. I'm not  
14 aware of any.

15 Q. And you do understand that  
16 you're --

17 A. And that this is only speaking --  
18 this is somebody else's writeup and conclusions.  
19 I don't know what it exactly has to do or how he  
20 took those, or whatever.

21 Q. You understand that you have been  
22 designated as a representative to speak on behalf  
23 of the American Tobacco Company; correct, sir?

24 A. Yes, indeed.

25 Q. And you understand that we have

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1 clarified through meet and confers and otherwise  
2 that the time period we would be discussing was  
3 1954 to 1994; correct?

4 A. Right.

5 Q. And you felt that you were prepared  
6 and ready to testify on those issues before you  
7 came here today; correct?

8 A. The best I could.

9 Q. Let's go to the last paragraph, the  
10 middle sentence, it states, quote, "Hamner of A.T.  
11 Co. had prepared a comprehensive scheme for  
12 biological research several years ago, but action  
13 on this has been deferred."

14 Was it your understanding that  
15 there was a scheme -- "a comprehensive scheme for  
16 biological research" that had been developed at  
17 American Tobacco Company?

18 A. I'm not aware of any.

19 Q. Okay. But you are aware that not  
20 only was it deferred in 1958, it was ultimately  
21 deferred completely; correct?

22 A. Until I had seen this document to  
23 read, I didn't know anything about 1958.

24 Q. But at least you knew that as far  
25 as you knew, there has never been a biological

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1 research program undertaken by The American  
2 Tobacco Company in-house; correct?

3 MR. WALLACE: Objection, asked and  
4 answered.

5 A. I believe that's true, there's not  
6 been a biological program in-house.

7 MR. WALLACE: Mr. O'Fallon, this  
8 one was not marked as an exhibit?

9 MR. O'FALLON: It's been previously  
10 marked as an exhibit, sir.

11 MR. WALLACE: Oh, I'm sorry. I  
12 didn't see that.

13 Q. In 1965, American Tobacco came into  
14 possession of information indicating that there  
15 were nitrosamines in cigarette smoke; correct?

16 MR. WALLACE: Objection, lack of  
17 foundation, assumes facts not yet on evidence --  
18 record evidence.

19 MR. O'FALLON: It's called a setup  
20 question, sir. That's what we do.

21 MR. WALLACE: I have stated my  
22 objection. You don't need to explain it,  
23 Mr. O'Fallon.

24 MR. O'FALLON: It seems that you're  
25 a little confused about it.

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1 MR. WALLACE: Mr. O'Fallon, I  
2 object to your continuing commentary on  
3 objections -- objections that are made. It's not  
4 necessary sir, and it's inappropriate, and I'd  
5 appreciate it if you'd stop.

6 MR. O'FALLON: Why don't you read  
7 back my question once more, which was, once again,  
8 interrupted by an objection.

9 (Record read.)

10 A. I did review the document ahead of  
11 time, and I think it has to do with discussions  
12 about somebody finding a method in nitrosamines,  
13 and if that's the one you're referring to, yes,  
14 and I think there's also a conclusion that, "Well  
15 maybe that probably wasn't there," but I don't --  
16 that would have been the first hint.

17 Q. Did your research department  
18 undertake after 1965, which would have been after  
19 you started to determine whether or not, in fact,  
20 nitrosamines were in cigarette smoke?

21 A. I don't believe that we did.

22 Q. You understand that nitrosamines  
23 are considered to be carcinogenic; correct?

24 A. They are certainly listed as animal  
25 carcinogens, yes.

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1 Q. And you would agree that human  
2 beings are animals; correct?

3 A. If you want to push it that far.

4 Q. Well, are human beings animals?

5 A. Sometimes.

6 Q. And so you had information in your  
7 files that indicated that nitrosamines, a  
8 potential carcinogen, were in cigarette smoke, and  
9 your own laboratories did nothing to try to  
10 confirm that?

11 MR. WALLACE: Objection, asked and  
12 answered.

13 A. We didn't have the capability at  
14 that time. We went on to do that later on, some  
15 years.

16 Q. So, at some point in time, you did  
17 confirm that nitrosamines were in cigarette smoke?

18 A. Yes. I don't think we ever  
19 disputed that.

20 Q. When did you finally determine that  
21 the nitrosamines were in the cigarette smoke?

22 A. I think after other literature was  
23 probably discussed. I don't know that anybody  
24 objected to that.

25 Q. Do you remember what year you

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1 characterized the nitrosamines?

2 A. We didn't start doing our own  
3 nitrosamine work until sometime in the '80s.

4 MR. O'FALLON: I would like to have  
5 marked a document Bates stamped numbered MNAT  
6 00880155 through 00880161.

7 (Plaintiffs' Exhibit 1127 was  
8 marked for identification.)

9 MR. WALLACE: Were these range of  
10 documents, Mr. O'Fallon, predesignated?

11 MR. O'FALLON: Yes, they were.  
12 This particular document, I believe, was only  
13 recently discovered after the eighth-month-late  
14 production by American Tobacco of 61 boxes of  
15 documents into the depository. I believe a letter  
16 was sent to Mr. Getsinger on Friday.

17 MR. WALLACE: Here you go.

18 Q. Do you recognize the document that  
19 we have had marked as Plaintiffs' Exhibit 1127?

20 A. Okay.

21 Q. Do you recognize this?

22 A. I recognize it from seeing it after  
23 it had been designated, yes.

24 Q. Okay. So, you would have reviewed  
25 it sometime over the weekend?

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1           A.       Yes.  
2           Q.       Let's go to the third paragraph of  
3 the first page.  
4           By the way, this is entitled  
5 "Nitrosamines in Cigarette Smoke"; correct?  
6           A.       That's correct.  
7           Q.       It's from a J.M. Moseley; correct?  
8           A.       That's right.  
9           Q.       Who was that?  
10          A.       One of the -- one of the men on the  
11 research staff at American Tobacco.  
12          Q.       And it's to a Dr. W.R. Harlan;  
13 correct?  
14          A.       Yes, sir.  
15          Q.       And who was he, Dr. Harlan?  
16          A.       At that time, he was the head of  
17 the R&D laboratories.  
18          Q.       Okay. And this is dated January  
19 12th, 1965; correct?  
20          A.       That's correct.  
21          Q.       The third paragraph states that  
22 "The possibility of the presence of nitrosamines  
23 in cigarette smoke is of enormous interest to  
24 persons concerned with the reported carcinogenic  
25 activity of cigarette smoke"; correct?  
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1 A. Yes.

2 Q. And was American Tobacco Company  
3 among those that were concerned with the reported  
4 carcinogenic activity of cigarette smoke?

5 A. Well, it seems that we are  
6 concerned enough to be writing this memo about  
7 it. I guess, yes, sure.

8 Q. And again, this would be a memo  
9 that would be written in the ordinary course of  
10 business; correct?

11 A. That's correct.

12 Q. And kept in the ordinary course of  
13 business?

14 A. Yes.

15 Q. Mr. Moseley then goes on to state,  
16 "Dr. Hans Falk of the National Cancer Institute,  
17 Public Health Service recently stated that, if the  
18 presence of nitrosamines in cigarette smoke can be  
19 proved, the entire direction of the work of the  
20 USDA/PHS team would be altered," correct?

21 A. Okay.

22 Q. "He stated that nitrosamines are  
23 the most potent carcinogens known to man and the  
24 activity of polycyclic hydrocarbons polonium 210  
25 and other carcinogens which have been identified

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1 in smoke is insignificant by comparison"; correct?

2 A. That's what it says.

3 Q. Would you agree with that?

4 A. I have no expertise to agree, other  
5 than what it says.

6 Q. Let's turn to the second page.  
7 There's some general discussion in here about some  
8 work that's been done in -- I believe it's South  
9 Africa concerning nitrosamines; correct?

10 A. Uh, let's see. It would be at the  
11 bottom --

12 MR. WALLACE: Would you like to  
13 point him to a specific portion? It's a rather  
14 lengthy, single-spaced page, Mr. O'Fallon. It  
15 might help speed things up.

16 MR. O'FALLON: I'm trying to find  
17 it.

18 Q. Actually, look back at the first  
19 page.

20 At the last paragraph, it says,  
21 "During a recent trip of the USDA/PHS team to  
22 Europe, they were told by Professor Druckrey in  
23 Frieberg that one Dr. Serfontein had found  
24 nitrosamines in cigarette smoke, and this fact had  
25 been published in the South African Medical

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1 Journal"; correct?  
2 A. Yes, that's what it says.  
3 Q. And it says, "Dr. Falk has been  
4 unable to track down this report"?  
5 A. That's right.  
6 Q. Okay. Now, if you go over to the  
7 second page, Bates number at the bottom 156, and  
8 go to the last sentence?  
9 A. The last sentence?  
10 Q. Or the last paragraph, I'm sorry.  
11 A. Last paragraph.  
12 Q. It says, "We wrote to Dr. J.N.  
13 Marais of the Tobacco Research Institute,  
14 Rustenburg, South Africa, and asked him to acquire  
15 into the report ascribed to Dr. Serfontein."  
16 I think that's how you pronounce  
17 that.  
18 A. That's good enough for me.  
19 MR. WALLACE: I'm sorry, Mr.  
20 O'Fallon. There's also marginalia there. You're  
21 intentionally omitting that or --  
22 MR. O'FALLON: I can't read it,  
23 sir, to be honest about it.  
24 MR. WALLACE: There is marginalia.  
25 MR. O'FALLON: Yes, there is  
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1 marginalia, and this document will go to the jury,  
2 and they will do with the marginalia what they do  
3 with the marginalia.

4 If you can read it and you would  
5 like to put it in the record, be my guest.

6 MR. WALLACE: No. I'm just simply  
7 pointing out, since Mr. Price is being asked to  
8 indicate whether you've read things correctly,  
9 but subject to the fact there is marginalia, you  
10 have read it correctly.

11 MR. O'FALLON: And just so you  
12 understand, we intend to admit this document in  
13 evidence, and we hope the jury will have this  
14 document in its entirety so that they can judge  
15 whether I'm reading it correctly or not so they  
16 don't have to rely on my rendition of the  
17 document, okay?

18 Q. He goes on to state that "In his  
19 reply dated October 29, 1964, copy attached, he  
20 reported on a conversation with Dr. Serfontein."

21 He then states, quote, "The latter  
22 had stated that he had qualitatively identified  
23 nitrosamines in tobacco smoke beyond any doubt and  
24 described his analytical technique in general  
25 terms to Dr. Marais, who, in turn, described them

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1 to us," correct?

2 A. That's what it said.

3 Q. So, it appears that at least in  
4 1965, you have some confirmation that at least one  
5 researcher has identified nitrosamines in  
6 cigarette smoke; correct?

7 MR. WALLACE: Objection, the  
8 document speaks for itself.

9 BY MR. O'FALLON:

10 Q. Correct?

11 A. I agree that's what it says.

12 Q. Then it says, "Dr. Marais is under  
13 the impression that nitrosamines have also been  
14 detected in tobacco smoke by Dr. Neurath of  
15 Reemstra"; correct?

16 A. Yes.

17 Q. Reemstra is another cigarette  
18 manufacturer; correct?

19 A. Yes, it is.

20 Q. Is Reemstra a German company?

21 A. I believe so.

22 Q. So, it appears that at least two  
23 institutions have identified nitrosamines now in  
24 tobacco smoke by 1965; correct?

25 A. That's what this letter says; yes,  
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1 sir.

2 Q. It then goes at the last paragraph  
3 on the third page, last three Bates numbers 157,  
4 it states, quote, "Perhaps the possible presence  
5 of nitrosamines in cigarette smoke should be  
6 discussed by appropriate personnel in our own  
7 organization"; correct?

8 A. Yes.

9 Q. "It may be that work should be  
10 initiated either in our own laboratory or under  
11 contract in an effort to duplicate the results  
12 claimed by Mr. Serfontein and ascribed to  
13 Dr. Neurath," correct?

14 A. Yes.

15 Q. Was such investigation undertaken?

16 A. I'm not aware of any.

17 Q. Did American Tobacco make any  
18 effort to notify the public in 1965 that  
19 nitrosamines had been found in cigarette smoke?

20 A. Not to my knowledge.

21 Q. I believe you stated earlier that a  
22 company would have an obligation not to withhold  
23 material information concerning its own products  
24 and the dangers of its own products from the  
25 public; correct?

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1 A. That's correct.

2 Q. You would agree that American  
3 Tobacco's failure to inform the public of the  
4 presence of nitrosamines in cigarette smoke would  
5 be a violation of that duty; correct?

6 MR. WALLACE: Objection. The  
7 question is argumentative and it calls for a legal  
8 conclusion.

9 You may answer.

10 A. I think the position there has been  
11 right along that when things are known by the  
12 general public health community, if we can't add  
13 anything more to it, we don't have that duty to  
14 warn that.

15 Q. Well, you would agree that Reemstra  
16 is not a member of the general health community,  
17 correct?

18 A. That's another tobacco company and  
19 out in the public literature, things that are  
20 known.

21 Q. That's a German company, correct?

22 A. Sure.

23 Q. The South African article was  
24 published in South Africa, correct?

25 A. Sure.

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1 Q. In fact, your own company had a  
2 fair amount of trouble tracking it down, correct?

3 A. But not shortly after that.

4 Q. It's certainly not going to be  
5 known by the man on the street that the cigarettes  
6 contained nitrosamines, a potent carcinogen, at  
7 that time, is it?

8 MR. WALLACE: Well, objection,  
9 Mr. O'Fallon.

10 Now you're mischaracterizing  
11 things. You've taken him across the Serfontein  
12 literature. You've extrapolated from that this  
13 general concept of nitrosamines, and you're  
14 suggesting the two are somehow equal and the  
15 public doesn't know about Serfontein research.

16 THE WITNESS: Well --

17 MR. O'FALLON: Is that an  
18 objection?

19 MR. WALLACE: Yes, it is.

20 MR. O'FALLON: The word "objection"  
21 works wonderfully.

22 MR. WALLACE: You can answer if you  
23 can.

24 MR. O'FALLON: If you remember it  
25 after the long interruption.

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1 MR. WALLACE: It's an objection,  
2 it's not an interruption, no more so than your  
3 questions are interruptions of objections, so  
4 please --

5 A. At this stage, the scientific  
6 community does a lot of back-and-forth when  
7 somebody identifies something, so to have the  
8 first indication that, yes, you're finding  
9 nitrosamines, it takes a lot more than one or two  
10 people to confirm that.

11 That later went on -- I'm aware of  
12 that -- so the position that I'm saying is that it  
13 takes awhile for that to evolve, but after that's  
14 known, no, we did not publish that, and as I said,  
15 we had the position that cigarettes are something  
16 that's known to have risk in using them, and if  
17 the information is in the public, we didn't do  
18 that.

19 Q. Your own company waited some 15  
20 years before you undertook to confirm that  
21 nitrosamines were, in fact, in cigarette smoke;  
22 correct?

23 MR. WALLACE: Objection. I think  
24 that mischaracterizes the testimony.

25 A. We started a program in the '80s  
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1 when we had the capability to look at our  
2 cigarettes. Others had already done much of that  
3 in the public health community and other private  
4 researchers, and probably at some of the other  
5 tobacco companies, but we did, when we were able  
6 to look at these in some reasonable manner -- we  
7 jumped into that.

8 Q. You could have looked at this issue  
9 in 1965; correct?

10 A. Could have.

11 Q. You just chose not to spend the  
12 money?

13 A. If we had -- we may have found it,  
14 we may not have, yeah.

15 Q. But you could have undertaken that  
16 research in 1965 if you had simply decided to  
17 spend the money; correct?

18 A. We could have.

19 Q. Instead, you made a knowing  
20 decision to wait for more than 15 years to confirm  
21 the presence of a carcinogen in your own product;  
22 correct?

23 MR. WALLACE: Objection as to the  
24 form.

25 A. We accepted what was out in the  
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1 literature. We have never just -- we have never  
2 not accepted that.

3 Q. Well, in 1954, you told the public  
4 your products were not injurious to health.

5 Did you ever take out a statement  
6 that says, "We now believe our products may be  
7 injurious to health"?

8 A. No.

9 MR. O'FALLON: I'm asking to be  
10 marked a document Bates stamp number 500082474.

11 (Plaintiffs' Exhibit 1128 was  
12 marked for identification.)

13 THE WITNESS: Okay.

14 Q. Do you have that document in front  
15 of you?

16 A. Yes, I do.

17 Q. This is entitled "New York Times,  
18 April 6th, 1967"; correct?

19 A. Yes.

20 Q. It says, "Tobacco Studies Draw  
21 Criticism"; correct?

22 A. Right.

23 Q. "Chief of American denies  
24 relationship to disease"; correct?

25 A. That's what it says.

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1 Q. The first paragraph states, "Robert  
2 B. Walker, president and chairman of the American  
3 Tobacco Company, criticized yesterday various  
4 studies that contend that cigarette smoking causes  
5 many diseases"; correct?

6 A. Yes.

7 Q. "The tobacco executive said that  
8 'No clinical or biological evidence has been  
9 produced which demonstrates how cigarettes relate  
10 to cancer or any other disease in human beings,'"   
11 correct?

12 A. Yes.

13 Q. At no point in this article is it  
14 disclosed by Dr. -- by Mr. Walker that American  
15 had evidence in its own files showing that  
16 nitrosamines -- potent carcinogen -- had been  
17 identified in tobacco smoke; correct?

18 MR. WALLACE: Objection as to form,  
19 and I think in fairness, if you're going to ask  
20 the witness to confirm that nowhere in the article  
21 does it say something, Mr. O'Fallon, that you at  
22 least accord him the fairness of reading the  
23 document as we sit here now.

24 MR. O'FALLON: I'm certainly not  
25 stopping him from reading it, sir.

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1 MR. WALLACE: Byron, I would ask  
2 you to please take the time to read the article.

3 A. I am.

4 Okay. I agree with what you said,  
5 that it reads that way.

6 MR. WALLACE: Wait.

7 MR. O'FALLON: My question was --  
8 why don't we have her read back my question for  
9 you.

10 (Record read.)

11 MR. WALLACE: Same objection.

12 A. No, I believe that's correct.

13 MR. O'FALLON: I would next like to  
14 mark a document that's been Bates stamped number  
15 500011469.

16 (Plaintiffs' Exhibit 1129 was  
17 marked for identification.)

18 Q. I have had marked as Plaintiffs'  
19 Exhibit 1129 a document Bates stamp numbered  
20 500011469.

21 Have you seen this before?

22 A. Yes.

23 Q. At the top, it indicates that this  
24 is a full-page ad appearing in New York Times on  
25 September 4th, 1969; correct?

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1 A. That's right. That's what it said,  
2 yes, sir.

3 Q. And it's entitled "Why we're  
4 dropping the New York Times"; right?

5 A. Right.

6 Q. At the bottom, it's attributed to  
7 the American Tobacco Company, a Division of  
8 American Brands, Inc.?"

9 A. Right.

10 Q. The first paragraph says, "Last  
11 week, the times said it would accept cigarette ads  
12 only if they contain (1) a health caution notice,  
13 and (2) tar and nicotine figures"; correct?

14 A. That's right.

15 Q. American Tobacco states, quote, "We  
16 don't go along with this"; correct?

17 A. That's what it says.

18 Q. In the fifth paragraph, they say,  
19 "Sure, there are statistics associating lung  
20 cancer in cigarettes"; correct?

21 A. Yes.

22 Q. It states, "There are statistics  
23 associating lung cancer with divorce and even with  
24 a lack of sleep"; correct?

25 A. Okay.

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1 Q. Wouldn't you feel it's fair for the  
2 public reading that to conclude that American  
3 Tobacco is greatly demeaning the evidence that  
4 associates lung cancer with cigarettes?

5 MR. WALLACE: Objection as to  
6 form. It's vague and ambiguous, requires  
7 speculation.

8 A. I don't know that. I have no way  
9 of knowing what the public received or thought of  
10 this.

11 Q. They also go on to say, "But no  
12 scientist has produced clinical or  
13 biological proof that cigarettes cause the  
14 diseases they are accused of causing"; correct?

15 THE COURT REPORTER: I'm sorry,  
16 could you repeat that?

17 MR. O'FALLON: Sure.

18 Q. The document goes on to state,  
19 quote, "That no scientist has provided clinical or  
20 biological proof that cigarettes cause the  
21 diseases they are accused of causing"; correct?

22 MR. WALLACE: Actually says  
23 "produced," not "provided."

24 MR. O'FALLON: I'm sorry. Let me  
25 read it one more time.

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1 Q. The document says, "No scientist  
2 has produced clinical or biological proof that  
3 cigarettes cause the diseases they are accused of  
4 causing"; is that correct?

5 A. That's what it says.

6 Q. And again, The American Tobacco  
7 Company is not disclosing that they know there are  
8 nitrosamines in cigarette smoke; correct?

9 MR. WALLACE: Objection, asked and  
10 answered.

11 A. There has been no disclosure about  
12 nitrosamines in smoke.

13 Q. They are not disclosing that as of  
14 1958 when they talk to other tobacco  
15 manufacturers, they basically indicated they did  
16 not think there was any dispute about causation of  
17 lung cancer; correct?

18 MR. WALLACE: I'm sorry, are you  
19 reading from something, Mr. O'Fallon?

20 MR. O'FALLON: No.

21 MR. WALLACE: Then I would like the  
22 question to be read back, please.

23 MR. O'FALLON: Why? Is that a new  
24 requirement, I have to read from something?

25 MR. WALLACE: No, it's not,

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1 Mr. O'Fallon.

2 MR. O'FALLON: Well then state your  
3 objection and stop interrupting me.

4 MR. WALLACE: Mr. O'Fallon, I'm  
5 entitled to understand what's going on here, and  
6 if I have some confusion or don't hear something  
7 myself, I'm entitled, I think, just as a normal  
8 business course to point that out to you.

9 MR. O'FALLON: You asked me whether  
10 I was reading from a document, sir. You're not  
11 entitled to know that.

12 Now listen to the questions and  
13 state a legitimate objection or be quiet.

14 MR. WALLACE: Madam reporter, would  
15 you please read back Mr. O'Fallon's last attempt  
16 at asking a question, please.

17 (Record read.)

18 MR. WALLACE: Objection. I think  
19 that's a total mischaracterization of the  
20 testimony to this point.

21 THE WITNESS: Say it again, the  
22 last part.

23 (Record read.)

24 A. Well, there was no -- we did not  
25 disclose anything in '58, yes, that's true, about

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1 causation of lung cancer.

2 This is speaking now to biological  
3 proof, which is different than what was referred  
4 to as causation in surgeon general's report.

5 Q. Don't you think it's fair that most  
6 people who read this statement would draw from it  
7 that the tobacco industry continues to contend  
8 that lung cancer is not caused by cigarettes?

9 MR. WALLACE: Objection, calls for  
10 speculation.

11 The document, if it's Exhibit 1129  
12 we are now talking about, speaks for itself.

13 A. No, I don't know what people are  
14 thinking. I can't speculate on that.

15 Q. It would certainly be reasonable  
16 for someone who is reading this ad to conclude  
17 that American Tobacco was saying that the link  
18 between lung cancer and cigarettes had not been  
19 proven and did not exist; correct?

20 A. It's indicating that it has not  
21 been proven biologically.

22 Q. And it would also be reasonable for  
23 someone to conclude that the American Tobacco  
24 Company, at least, was telling them that there was  
25 no such link between cigarette smoking and lung

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1 cancer; correct?

2 MR. WALLACE: Objection, the  
3 document speaks for itself, calls for  
4 speculation.

5 A. Well, I think that would be a  
6 really kind of a hard conclusion, in that it  
7 says -- it acknowledges the association between  
8 lung cancer and cigarettes, so that's there.

9 Q. And it -- and it attributes that  
10 association the same strength as the association  
11 between lung cancer and divorce and lung cancer  
12 and lack of sleep; correct?

13 MR. WALLACE: Objection, the  
14 document speaks for itself.

15 A. That's what it says.

16 Q. So, really, it's poking fun at that  
17 association, isn't it, sir?

18 MR. WALLACE: Objection,  
19 argumentative. The document speaks for itself,  
20 Mr. O'Fallon.

21 A. I can't comment on whether it's  
22 poking fun or not. It just says that.

23 Q. It's suggesting that the  
24 association is absurd, isn't it, sir?

25 MR. WALLACE: Objection.

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1 A. It is certainly suggesting that the  
2 company disagrees with it.

3 Q. Are you aware that in 1971, the  
4 company -- or at least individuals within the  
5 company opposed doing immunological -- doing  
6 testing concerning immunological aspects of  
7 cancer?

8 A. I'm not aware of what you're asking  
9 me.

10 MR. O'FALLON: I have asked to be  
11 marked as an exhibit Bates stamp numbered ATX  
12 090027268 through 270.

13 (Plaintiffs' Exhibit 1130 was  
14 marked for identification.)

15 Q. Is this a document you've seen  
16 previously?

17 A. Yes, I saw that when it was  
18 preproduced.

19 Q. Okay. So, you have had a chance to  
20 review this document prior to today; correct?

21 A. Yes.

22 Q. This document is dated February 1st  
23 of 1971; correct?

24 A. Okay, right.

25 Q. And it's to Dr. Robert B. Walker,  
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1 chairman of the board and chief executive officer;  
2 right?

3 A. Mr. Walker, yes.

4 Q. And he is -- and it's from Robert  
5 K. Heimann; correct?

6 A. Right.

7 Q. And Mr. Heimann is at this time the  
8 president of American Brands, Inc.; correct?

9 A. Yes, that's what it's saying.

10 Q. And apparently, Mr. Heimann as  
11 president of American Brands, Inc., also had some  
12 responsibility for the tobacco aspects of American  
13 Brands?

14 A. Yes.

15 Q. At number one, and when the subject  
16 is, quote, "Research Proposal to the Tobacco  
17 Industry on Immunological Aspects of Cancer";  
18 correct?

19 A. Yes.

20 Q. Mr. Heimann states, one, "Once we  
21 start subsidizing a potential cure for cancer, we  
22 are well on the way towards assuming  
23 responsibility for the disease"; correct?

24 A. That's what it says.

25 Q. He then says, "This completely

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1     undercuts our position that tobacco smoke has not  
2     been proved to be a cause of lung cancer";  
3     correct?

4             A.       That's what he said.

5             Q.       Now, in 1954 in the Frank  
6     Statement, the industry said that it "accepted an  
7     interest in people's health as a basic  
8     responsibility paramount to every other  
9     consideration in our business"; correct?

10            A.       Yes, I see that paragraph.

11            Q.       Isn't research subsidizing a  
12     potential cure for cancer the exact type of  
13     research that the public had a right to expect the  
14     cigarette industry to be producing and subsidizing  
15     based on its statements in the 1954 Frank  
16     Statement?

17                   MR. WALLACE:  Objection, calls for  
18     speculation.

19            A.       I don't know what the -- I don't  
20     know what the public would be expecting, but there  
21     might be, at least in my mind, certainly a  
22     difference of doing research and finding out what  
23     causes disease, as opposed to a cure.

24            Q.       Especially if it undercuts the  
25     tobacco industry's defense that it has not been

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1 proved that tobacco smoke is a cause of lung  
2 cancer, correct?

3 A. Well, that's what he said.

4 Q. Number two, he says, "The fact that  
5 this particular grant cannot be handled through  
6 the Scientific Advisory Board gives it the taint  
7 of illegitimacy"; correct?

8 A. That's what it says.

9 Q. And that would be true of any grant  
10 that went outside of the SAB, correct, the  
11 Scientific Advisory Board?

12 A. I can't speak to any grant. I  
13 don't know exactly what the illegitimacy came  
14 from.

15 Q. The fact of the matter is that when  
16 you took out the Frank Statement in 1954 and set  
17 up the Tobacco Industry Research Committee and its  
18 successor, The Council for Tobacco Research, you  
19 indicated to the public that everything would be  
20 run through this independent board, this  
21 Scientific Advisory Board; correct?

22 MR. WALLACE: Objection. The Frank  
23 Statement which you've marked as an exhibit here,  
24 Mr. O'Fallon, speaks for itself.

25 MR. O'FALLON: Want to repeat that  
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1 question again?

2 THE WITNESS: Please.

3 (Record read.)

4 MR. WALLACE: I think it may

5 also --

6 A. I don't know that it says we are  
7 going to run everything through there. It says a  
8 group of distinguished men will be invited to  
9 serve on this board, there will be an advisory --  
10 disinterested to the cigarette industry.

11 No, I don't think that -- I don't  
12 believe that says it's taking everything through  
13 there.

14 Q. You don't think it implies that  
15 you're going to do this research in an objective  
16 manner, not as a defense of the industry?

17 MR. WALLACE: I'm sorry,

18 Mr. O'Fallon.

19 Objection, vague and ambiguous.

20 Are we speaking now about the Frank Statement or  
21 are we speaking about what you've marked as 1130?

22 Can we have some clarification.

23 MR. O'FALLON: You're not being  
24 asked the questions.

25 MR. WALLACE: No, sir, but I do

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1     need to --

2                     MR. O'FALLON:  If this gentleman  
3     has a problem, I think he is perfectly able to  
4     state that he doesn't understand the question.  
5     The fact that you don't understand the question is  
6     is really irrelevant because you're not under oath  
7     and being asked.

8                     MR. WALLACE:  No, but I am  
9     defending the deposition, sir, and I do have a --

10                    MR. O'FALLON:  You're doing  
11     something, that's for certain.

12                    MR. WALLACE:  You know, I didn't  
13     interrupt you, Mr. O'Fallon, so I'd appreciate it  
14     if you would not interrupt me, okay?

15                    MR. O'FALLON:  Actually, you did.

16                    MR. WALLACE:  Objection, vague and  
17     ambiguous.  You have taken this witness now  
18     between two different documents, and then you come  
19     back with a follow-up question that says "this"  
20     and "that."

21                    I think it's confusing, it's vague  
22     and ambiguous, and I object.

23                    MR. O'FALLON:  I think "vague and  
24     ambiguous" and "objection" will do it, sir.

25                    Let's go back and read the

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1 question.

2 (Record read.)

3 THE VIDEOGRAPHER: Go off the  
4 record one minute, change tapes.

5 (Recess taken.)

6 MR. O'FALLON: Would you please  
7 reread the last question?

8 (Record read.)

9 MR. WALLACE: Objection, vague and  
10 ambiguous and whatever it is you're referring to,  
11 it speaks for itself.

12 A. I'm not sure now what you're  
13 referring to.

14 Q. The Frank Statement, you would  
15 agree that the Frank Statement gives the  
16 impression to the public that the research you do  
17 at TIRC is going to be objective and not a defense  
18 of the industry; correct?

19 MR. WALLACE: Objection, asked and  
20 answered. Frank Statement speaks for itself.

21 MR. O'FALLON: Never heard a  
22 document talk, sir.

23 A. It says "There will be an advisory  
24 board" and I agree that it says it will be done by  
25 scientists with "unimpeachable integrity and

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1 national reputе."

2 Q. Without a direct interest in the  
3 tobacco companies; right?

4 A. I don't see that anywhere there,  
5 but in the -- disinterested in the cigarette  
6 industry, yes, sir.

7 Is that what you're saying -- yeah.

8 MR. O'FALLON: I'm going to have  
9 marked as the next exhibit a document Bates stamp  
10 numbered ATX 090029914 through 29915.

11 (Plaintiffs' Exhibit 1131 was  
12 marked for identification.)

13 Q. Do you have the document in front  
14 of you, sir?

15 A. I sure do.

16 Q. This is a document dated October 4  
17 of 1983 from the Vice President of Public Affairs  
18 to numerous American Brands subsidiaries; correct?

19 A. That's correct.

20 Q. Included in those subsidiaries is  
21 Gallaher Limited; correct?

22 A. Well, if I can find it.

23 Yes, it is, Stewart Cameron.

24 Q. Do you know who Mr. Cameron was?

25 A. Well, it says he's chairman, and I  
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1 think that was true.

2 Q. And what this was requesting is  
3 that Gallahers and others, including American  
4 Tobacco, answer whatever questions are attached in  
5 this letter; correct?

6 A. Yes.

7 Q. And this would be typical of the  
8 interactions between Gallahers and American  
9 Brands, that is, when American Brands needed  
10 information from Gallahers, they could certainly  
11 send out a memo and get that information; correct?

12 MR. WALLACE: Objection. It  
13 mischaracterizes the testimony. There's been no  
14 testimony to this point about what is typical in  
15 this regard.

16 A. I don't know how much -- how many  
17 similar documents there are like this, but  
18 certainly, Cameron is copied on this. Certainly,  
19 Gallaher was a subsidiary of American Brands; yes.

20 Q. He is more than copied. I mean,  
21 this is sent directly to him and the other people,  
22 right?

23 A. Excuse me, my phrasing.

24 Q. Were you aware that Gallahers had  
25 made -- Gallaher had made public statements

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1 concerning the association between tobacco smoking  
2 and toxicity?

3 MR. WALLACE: Objection, beyond the  
4 scope of the Deposition Notice and vague and  
5 ambiguous.

6 A. I was not aware until seeing the  
7 notices that you had precopied us.

8 Q. Okay. And I'm going to show you  
9 what we have had previously marked -- well,  
10 actually, I'm going to need this -- I need this  
11 remarked, because only part of this, I think, I  
12 believe was actually -- I would ask that this be  
13 marked, and the document I'm having marked is a  
14 document Bates stamp numbered 110083830 through  
15 831.

16 The reason I'm having it marked  
17 again is because this was produced as two separate  
18 documents, and I'm not certain whether when it was  
19 marked previously as Plaintiffs' Exhibit 40, both  
20 the first and second page were included.

21 So, with that caveat, if we could  
22 remark this exhibit.

23 (Plaintiffs' Exhibit 1132 was  
24 marked for identification.)

25 Q. And what's that exhibit number,  
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1 sir? I'm sorry.  
2 A. It's 1132.  
3 Q. And you've seen Plaintiffs' Exhibit  
4 1132 previously; correct?  
5 A. Yes, I have.  
6 Q. The first page of 1132 is Bates  
7 stamp numbered, last three numbers, 830.  
8 A. Okay.  
9 Q. And it states, "In view of our own  
10 worries about how to say some things in public,  
11 the attached letter from Gallahers is  
12 instructive"; correct?  
13 A. That's what it said.  
14 Q. So, "The statements are made that,"  
15 quote, "studies have shown that lung cancer death  
16 rate is almost directly related to the number of  
17 cigarettes consumed"; correct?  
18 A. That's what it says.  
19 Q. And that, quote, "The toxicity of  
20 cigarettes can be regarded as the product of tar  
21 yield and specific activity"; correct?  
22 A. That's what it said.  
23 Q. They then go on to state, "The  
24 first statement is clearly true, the second rather  
25 debatable, but the important points are that field  
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1 is on the medical register, Gallahers are a  
2 subsidiary of an American company, and Gallahers  
3 are members of ICOSI"; correct?

4 A. Yes, that's what it reads.

5 Q. And then let's look at the second  
6 page.

7 This appears to be a reproduction  
8 of a page out of a journal known as "The Lancet"  
9 dated April 8th of 1978; correct?

10 A. Yes.

11 Q. Are you familiar with The Lancet?

12 A. Only vaguely.

13 Q. The Lancet is a British medical  
14 journal; correct?

15 A. I believe it to be, or at least an  
16 associated field.

17 Q. And under the "Substitute Tobacco  
18 Tar Toxicity" is an apparent letter to the editor  
19 from Gallaher Limited; correct --

20 A. Yes.

21 Q. -- signed by a Mr. Boxall and a  
22 Mr. Field; correct?

23 A. That's right.

24 Q. Are you familiar with those two  
25 individuals?

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1 A. I know the name "Boxall," met him  
2 one time.

3 Q. And was he in research and  
4 development?

5 A. Yes, he was.

6 Q. How about Field; do you know who  
7 that is?

8 A. Never heard of him.

9 Q. At the fourth paragraph of that  
10 letter, Gallaher states, quote, "Epidemiological  
11 studies have shown that lung cancer death rate is  
12 almost directly related to the number of  
13 cigarettes consumed"; correct?

14 MR. WALLACE: Objection. That's a  
15 mischaracterization of this document.

16 You may answer.

17 A. Yes, it reads that way.

18 Q. Did American -- either American  
19 Brands or American Tobacco ever make that  
20 statement to the consuming public in the United  
21 States?

22 A. I'm not aware of that.

23 Q. Okay. These Gallaher employees  
24 also go on to state, quote, "The toxicity of  
25 cigarettes can be regarded as the product of tar

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1 yield and specific activity"; correct?

2 A. Yes, it reads that way.

3 Q. Did The American Tobacco Company or  
4 American Brands ever make that statement to the  
5 consuming public in the United States?

6 A. Not to my knowledge.

7 MR. WALLACE: Mr. O'Fallon, we have  
8 been going about an hour and ten --

9 MR. O'FALLON: Want to take a  
10 five-or-ten-minute break?

11 THE WITNESS: Yeah.

12 (Recess taken.)

13 Q. Mr. Price, I would like to turn  
14 next to the subject matter of addiction.

15 It's been the tobacco industry's  
16 position that cigarette smoking is not addictive;  
17 correct?

18 A. That's correct.

19 Q. In fact, the cigarette industry has  
20 taken out advertisements that state that; correct?

21 MR. WALLACE: State an objection,  
22 to the extent this goes beyond the scope of the  
23 Notice requiring Mr. -- that brings Mr. Price here  
24 to speak with respect to his knowledge of American  
25 Tobacco, Mr. O'Fallon, and not the tobacco

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1 industry as a whole.

2 MR. O'FALLON: You can answer.

3 THE WITNESS: Say it again, then.

4 MR. O'FALLON: Please repeat.

5 (Record read.)

6 A. I don't know what the cigarette  
7 industry in general has done.

8 Q. I would like to show you what's  
9 been marked previously as Plaintiffs' Exhibit  
10 327.

11 This is a document Bates stamp  
12 numbered MNAT 00639587.

13 Have you seen this document before?

14 A. I'm not sure that I have.

15 Q. This is apparently published by The  
16 Tobacco Institute; correct?

17 A. At the top -- okay, it says  
18 "Tobacco Institute," all right.

19 Q. And American Tobacco Company is  
20 part of the Tobacco Institute; correct?

21 A. American Tobacco was in and out of  
22 the Tobacco Institute. I'm not sure I know the  
23 dates.

24 Q. Do you know whether or not in 1988,  
25 American Tobacco Company was part of the Tobacco

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1 Institute?

2 A. It may have been. I'm not sure.

3 Q. Okay. This is a document that  
4 appears to have been produced out of the American  
5 Tobacco Company files; correct?

6 A. Well, I can't tell that it has been  
7 one way or another.

8 Q. Why don't you look at the bottom  
9 where it says "MNAT 00639587."

10 A. Okay.

11 Q. Is it your understanding that  
12 that's a Bates stamp number assigned by The  
13 American Tobacco Company to documents produced in  
14 Minnesota?

15 A. No, didn't know that.

16 Q. The basic thrust of this news  
17 release is to contend that the surgeon general's  
18 report issued in 1988 is incorrect when the  
19 surgeon general concludes that cigarette smoking  
20 is addictive; correct?

21 MR. WALLACE: Objection, compound.  
22 The -- also, the document speaks for itself.

23 A. Let me read through this again.

24 (Pause)

25 Okay. Go ahead.

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1 Q. And again, the basic thrust of this  
2 advertisement is that the surgeon general's  
3 conclusions that cigarette smoking is addictive  
4 are incorrect; correct?

5 MR. WALLACE: Same objection.

6 A. I think this is pointing out that  
7 there are certainly differences in the definition  
8 for "addiction."

9 Q. Well, it's specifically claiming  
10 the surgeon general's conclusion is incorrect?

11 MR. WALLACE: Objection. The  
12 document speaks for itself.

13 A. I don't think it says it's  
14 incorrect, it's pointing out a different point of  
15 view.

16 Q. Has The American Tobacco Company  
17 ever stated to the American public that cigarette  
18 smoking is addictive?

19 A. No, because we believe that it is  
20 not.

21 Q. Has The American Tobacco Company  
22 ever stated to the American public that nicotine  
23 is a drug?

24 A. A drug in what sense, sir?

25 Q. Any sense, sir.

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1           A.       No. It's a chemical that's part of  
2 tobacco.

3           Q.       Has the American industry ever  
4 pointed out to the American public that a  
5 cigarette is basically a drug-delivery device for  
6 nicotine?

7           A.       Well, cigarette is certainly much  
8 more than a drug-delivery device for nicotine.  
9 It's many things. There's the whole aura of  
10 smoking enjoyment, the societal benefits that one  
11 gets from it, relaxation, the use of one's hands  
12 and the enjoyment of seeing the smoke.

13                   It's a whole concept, and taste is  
14 yet another great, big area.

15           Q.       Is the cigarette --

16           A.       The industry has spent a lot of  
17 time.

18           Q.       Is the cigarette a drug-delivery  
19 device for nicotine?

20                   MR. WALLACE: Objection, asked and  
21 answered.

22           A.       No.

23           Q.       And American has never stated to  
24 the public that it is; correct?

25           A.       That is correct.

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1 Q. One of the reasons the industry is  
2 concerned about admitting addiction is because  
3 addiction undercuts the industry's defense;  
4 correct?

5 MR. WALLACE: Objection, assumes  
6 facts not in evidence, beyond the scope of the  
7 Deposition Notice.

8 A. I don't know about "industry's  
9 defense," but American Tobacco company's position  
10 is very similar to what's outlined in 1964 surgeon  
11 general.

12 Q. Which has now been superseded by  
13 the 1988 surgeon general's report; correct, sir?

14 A. Yes, they did redefine nicotine  
15 addiction.

16 MR. O'FALLON: Please go off the  
17 record for a second.

18 (Discussion off the stenographic  
19 record.)

20 Q. I'm handing you a document that's  
21 been previously marked, and we are going to fill  
22 in the exhibit number for this document when we  
23 get it. It was marked last week, but it's a  
24 document Bates stamped TIMM 0107822 to 83. It's a  
25 document dated September 9th, 1980.

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1 Have you seen this document  
2 previously?

3 MR. WALLACE: Take your time.  
4 A. Let me go over this for sure.  
5 (Pause)

6 Okay. I'm not sure that I have  
7 read that before, okay?

8 Q. Have you had a chance to look at  
9 that document now?

10 A. Apparently, yes.

11 Q. This is a document that deals with  
12 a surprise that the Tobacco Institute received  
13 concerning the National Institute of Drug Abuse;  
14 correct?

15 MR. WALLACE: Objection. The  
16 document speaks for itself.

17 A. It says that.

18 Q. Specifically, it says, quote,  
19 "Attached, please find the technical review of the  
20 conference which led to Victor Cohn's," quote,  
21 "Surprise," end quote, "story of 8/30 that the  
22 National Institute of Drug Abuse wants," quote,  
23 "addictive," end quote, "added to the cigarette  
24 warning"; correct?

25 A. That's what it said.

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1 Q. The third paragraph also states,  
2 quote, "I wonder if the Institute was caught  
3 unaware on this matter"; correct?  
4 A. Yes, sir.  
5 Q. Let's go to the last page.  
6 Oh, by the way, do you know who  
7 Mr. Kloepfer is?  
8 A. Never heard of him.  
9 Q. How about Mr. Knopick --  
10 A. No.  
11 Q. -- or Knopick?  
12 A. No.  
13 Q. The last page, it states, quote, "I  
14 feel badly about my own lack of  
15 intelligence-gathering on this situation";  
16 correct?  
17 A. Yes.  
18 Q. It then says, "But I don't think  
19 the questions I now raise are academic"; correct?  
20 A. Yes.  
21 Q. It says, "Shook, Hardy reminds us,  
22 I'm told, that the entire matter of addiction is  
23 the most potent weapon a prosecuting attorney can  
24 have in a lung cancer cigarette case"; correct?  
25 A. That's what it said.

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1 Q. And you understand who Shook,  
2 Hardy; correct?  
3 A. I would assume that to be Shook,  
4 Hardy & Bacon.  
5 Q. And that's one of the long-time  
6 legal counsel for the tobacco industry; correct?  
7 MR. WALLACE: Objection.  
8 A. I'm sure they -- they represent  
9 some people. I don't know who.  
10 Q. But you've heard of them, right?  
11 A. I have heard of them before.  
12 Q. You've know of them for quite some  
13 time?  
14 A. Some years.  
15 Q. Finally, it says, quote, "We can't  
16 defend the continued smoking as," quote, "free  
17 choice, if the person was," quote, "addicted," end  
18 quote; correct?  
19 A. That's what that concludes.  
20 Q. And you would agree that that's  
21 true; right?  
22 A. No.  
23 Q. It would be hard for the cigarette  
24 industry to keep defending cigarette smoking as  
25 free choice if, in fact, cigarettes are addictive;  
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1 correct?

2 A. Whether people -- whether  
3 cigarettes are addictive or not, by whatever  
4 definition, it's still a matter of free choice.  
5 It's a personal behavior. It's what people do. I  
6 don't look at that as a key at all, but then  
7 again, I'm not a lawyer.

8 Q. I believe you said your current  
9 employer is the British-American Tobacco Company;  
10 correct?

11 A. My employer is Brown & Williamson  
12 Tobacco Company.

13 Q. And they are owned by the  
14 British-American Tobacco industries; correct?

15 A. B.A.T. Industries.

16 Q. Actually, B.A.T. Industries,  
17 right --

18 A. Uh-huh.

19 Q. -- which also owns British-American  
20 Tobacco Company; correct?

21 A. Right.

22 Q. And you understand that early in  
23 its history, B.A.T. Industries was, in fact, BAT  
24 Co; correct?

25 A. At one time, I believe so. I don't  
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1 know how they --

2 Q. I'm going to show you a document  
3 that we are going to need to be marked. It's  
4 going to be -- it's Bates number 110070785 through  
5 842.

6 (Plaintiffs' Exhibit 1133 was  
7 marked for identification.)

8 MR. WALLACE: Appears to predate  
9 your employment.

10 MR. O'FALLON: I'm not going to  
11 ask about the whole document, sir, I'm only going  
12 to ask about part of it.

13 MR. WALLACE: I'm still going to  
14 ask that you take the time to skim it.

15 Q. Have you seen this document  
16 previously, sir?

17 A. I'm not sure that I have.

18 Q. What I'm going to ask you to  
19 specifically look at is really the first page, the  
20 second page and what's down here as the fourth  
21 page, the last three Bates numbers 791.

22 A. Huh. Give me the page numbers  
23 again. I was reading the introduction.

24 Q. Sure. Just the first page.

25 A. Now, wait.

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1 Q. The very first page of the  
2 document.

3 A. Where it says, "Research  
4 Conference," page 1?

5 Q. Right. And then substantively,  
6 page, last three Bates numbers 791 -- well, and I  
7 guess 788, too, just to give background on 791.

8 A. Okay. I've got 788, and then you  
9 said 791?

10 Q. Uh-huh.

11 A. This seems to be a continuation of  
12 the paragraph here.

13 Okay. I have whipped through that.

14 Q. Okay. This is a research  
15 conference from 1962; correct?

16 A. Yes, sir.

17 Q. And it appears to be a report on  
18 that research conference; correct?

19 A. That's what it appears to be.

20 Q. And if you look at the second page  
21 of the document Bates number 786, it states,  
22 "Research Conference, Southampton, 1962 Smoking  
23 and Health Policy on Research"; correct?

24 A. Okay.

25 Q. Do you know who Sir Charles Ellis  
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1 is?

2 A. No.

3 Q. You've never heard that name?

4 A. I -- I'm just not reacting to it.

5 MR. WALLACE: Mr. O'Fallon -- I'm  
6 sorry.

7 Are you representing this to be an  
8 American document or someone else's document?

9 MR. O'FALLON: Excuse me, I have  
10 never represented this to be an American document.

11 MR. WALLACE: Do you want to  
12 establish any foundation for who this document  
13 belongs to or where it came from or not?

14 MR. O'FALLON: Is that an  
15 objection?

16 MR. WALLACE: Yes, it is.

17 MR. O'FALLON: Thank you. You see,  
18 "Objection, foundation," that would convey most of  
19 that to me. I really don't need to be lectured by  
20 you as to how to do it. Make your objection. If  
21 I think I need to, I'll lay more foundation, okay,  
22 sir?

23 MR. WALLACE: There be a  
24 misunderstanding. I'm not attempting to lecture  
25 you on anything, Mr. O'Fallon. I'm simply stating

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1 a point --

2 MR. O'FALLON: The only  
3 misunderstanding appears to be yours, sir.

4 MR. WALLACE: I don't think the  
5 derogatory comments are necessary, Mr. O'Fallon.

6 Q. You notice at the bottom where it  
7 says "BAT Co Limited," sir, do you see that?

8 MR. WALLACE: I'm not engaging in  
9 any further colloquy with you. You are free to do  
10 with my objection what you wish, sir.

11 MR. O'FALLON: So, if you have  
12 any -- you know, you can look -- there's actually  
13 usually Bates stamp numbers and such, sir. I know  
14 you may not be completely familiar with our  
15 litigation, but usually, that will tell you where  
16 the document came from, okay?

17 MR. WALLACE: Sir, I will repeat  
18 once again that I don't think your ad hominem,  
19 insulting comments are appropriate, but that  
20 doesn't seem to be doing any good.

21 MR. O'FALLON: Just wanted to make  
22 sure you understand, because you seem to be  
23 confused.

24 MR. WALLACE: I'm not confused  
25 about anything, sir, I'm simply stating my

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1 objections.

2 MR. O'FALLON: And I would  
3 appreciate it if you would do so in a succinct  
4 fashion.

5 MR. WALLACE: I believe I am, sir.

6 MR. O'FALLON: Obviously, we  
7 disagree about that, now don't we?

8 MR. WALLACE: I'm sure if we were  
9 to sit down, sir, we'd discover that you and I  
10 disagree about a great deal, but I have absolutely  
11 no interest in doing that.

12 MR. O'FALLON: I suspect that's  
13 absolutely correct.

14 MR. WALLACE: There are only so  
15 many people on the face of the earth who can do  
16 God's work as it is, I'm sure.

17 MR. O'FALLON: And you aren't one  
18 of them.

19 Q. Now, let's go to page 4, which is  
20 stamped at the bottom 791.

21 This is part of a presentation  
22 that's being made apparently by Sir Charles Ellis;  
23 correct?

24 A. Yes, sir.

25 Q. And I would like you to look at the  
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1 first full paragraph on the top of page 4, last  
2 three Bates numbers 791.

3 A. Wait, give me -- which paragraph  
4 again?

5 Q. I'm sorry, the first full  
6 paragraph.

7 A. First full paragraph?

8 Q. Do you see where we're at there?

9 A. Okay.

10 Q. The first word is "lastly"?

11 A. Okay. I've got that.

12 Q. He states, quote, "Lastly, smoking  
13 is a habit of addiction that is pleasurable; many  
14 people, therefore, find themselves subconsciously  
15 prepared to believe that it must be wrong."

16 By 1962, it appears that at least  
17 some people in the industry believed that smoking  
18 is addictive; correct?

19 MR. WALLACE: Objection,  
20 misrepresents this document. The document, in  
21 fact, speaks for itself.

22 MR. O'FALLON: And the jury will  
23 have the document. They can reach their own  
24 conclusions.

25 I'm asking this gentleman the  
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1 question I've asked him.

2 MR. O'FALLON: And I've made an  
3 objection, sir.

4 A. I know -- read it again.

5 Q. Oh, sure.

6 A. You -- you -- you were -- ask me  
7 that question again.

8 Q. Sure. Sir Charles Ellis states,  
9 quote, "Lastly, smoking is a habit of addiction  
10 that is pleasurable; many people, therefore, find  
11 themselves subconsciously prepared to believe that  
12 it must be wrong."

13 That what it states, correct?

14 A. That's what he read there.

15 Q. And it would appear to be at least  
16 some people then in 1962 within the tobacco  
17 industry believed that smoking is addictive;  
18 correct?

19 MR. WALLACE: Calls for  
20 speculation.

21 A. That -- that apparently is Sir  
22 Charles Ellis' opinion, and we certainly don't  
23 know by what rules or what definition of  
24 "addiction" he is referring to.

25 Q. You would agree that at this time,

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1 BAT Co, who produced this document, owned  
2 Brown & Williamson; correct?  
3 A. I'm assuming they did. I don't  
4 actually know that.  
5 Q. Let's look on page 787 --  
6 A. 787.  
7 Q. -- where it lists the delegates.  
8 A. 787 -- yeah, I'm back. Okay. I  
9 see what you're saying, uh-huh.  
10 Q. Do you see the names listed under  
11 USA?  
12 A. Yeah.  
13 Q. Are you familiar with any of those  
14 people?  
15 A. None of them work there now.  
16 Q. Right.  
17 A. I recognize the name of Griffith  
18 and Esterle.  
19 Q. How do you recognize the name of  
20 Dr. Griffith?  
21 A. Well, he was -- I believe he was  
22 head of their research department at one time.  
23 Q. And did you know him while you were  
24 with American Tobacco, or have you subsequently  
25 learned of him once you joined B&W?  
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1           A.       I knew of his name and had never  
2 known him personally either before or now.  
3           Q.       You just knew him by reputation?  
4           A.       Heard of his name.  
5           Q.       How about Esterle; how did you know  
6 Dr. Esterle?  
7           A.       I met him at TCRC meeting, Tobacco  
8 Chemists Research Congress.  
9           Q.       So, it appears that at least two  
10 employees of Brown & Williamson that you knew were  
11 at this presentation given by Sir Charles Ellis;  
12 correct?  
13          A.       Sure.  
14          Q.       I think we talked before about the  
15 connection between American Tobacco Company and  
16 Gallaher.  
17                   Did you know that American -- that  
18 Gallaher had some contacts with a researcher named  
19 Dr. Russell?  
20          A.       No, not until I seen the documents  
21 you had premarked.  
22          Q.       Did you understand that Dr. Russell  
23 was a researcher on the issues of addiction?  
24          A.       I was not familiar with  
25 Dr. Russell, no.

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1 Q. Okay. Based on the documents that  
2 you saw as part of my predesignation, did you  
3 understand that at some point in time in  
4 approximately 1977, Gallaher was looking into  
5 doing some research with Dr. Russell?

6 A. I gathered that from there.

7 Q. And just so the jury understands  
8 what we're talking about, let me have marked a --  
9 oh, it's already been marked as Plaintiffs'  
10 Exhibit 41.

11 This is a letter dated July 15th,  
12 1977.

13 Is this one of the documents that  
14 you saw?

15 A. Yes.

16 Q. And this is a document on the  
17 stationery of Gallaher Limited; correct?

18 A. Yes, it is.

19 Q. It's signed by an E.O. Field,  
20 correct?

21 A. Certainly is.

22 Q. That's the same individual who  
23 signed -- or who was listed on that letter to the  
24 editor from The Lancet; correct?

25 A. I -- it both says "E.O. Field."

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1 Q. And basically, this document  
2 indicates that there were ongoing discussions  
3 between British-American Tobacco Company and  
4 Gallaher Limited concerning some research they  
5 were proposing that Dr. Russell do; correct?

6 MR. WALLACE: The document speaks  
7 for itself.

8 A. Well, it says, "Perhaps as soon as  
9 Dr. Russell gets back, we should organize a  
10 meeting" -- yes, it says that.

11 Q. Okay. Dr. Russell believes that  
12 cigarette smoking was addictive; correct?

13 A. I don't know what all Dr. Russell  
14 believes.

15 Q. Let me show you a document that's  
16 been previously marked as Plaintiffs' Exhibit  
17 553.

18 Have you seen this document  
19 previously?

20 A. Yes, I believe I have.

21 Q. This is a document that's Bates  
22 stamp numbered 105392360 through 368 dated July  
23 17th, 1975; correct?

24 A. The date is July, '75; yes, sir.

25 Q. And on the front page, it appears

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1 that either Dr. -- it appears, I believe, that  
2 Dr. Ayres is sending a note to Dr. Green at BAT  
3 indicating that enclosed is a copy of Kay Comer's  
4 summary of a talk given by M.A.H. Russell;  
5 correct?

6 A. Yes.

7 Q. It says, quote, "Since the question  
8 of addiction comes up from time to time at  
9 Chelwood, I thought you might be interested in the  
10 comments"; correct?

11 A. Oh, yeah, that's what it said  
12 there.

13 Q. Let's go look at what Dr. Russell  
14 had to say as reported by Ms. Comer.

15 I have asked you to look at the  
16 next -- at the first page of the attached document  
17 Bates number 105392361.

18 Do you have that?

19 A. Okay.

20 Q. It's entitled "Comments of a Talk  
21 Given by Dr. M.A.H. Russell at a Meeting of the  
22 Experimental Pathology Club at the Imperial Cancer  
23 Research Fund Buildings London, attended by  
24 Mrs. A.K. Comer and Dr. R.E. Thornton on 27, June,  
25 1975"; correct?

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1 A. Yes, sir, that's what it says.

2 Q. The very first sentence of the very  
3 first paragraph states that "Dr. Russell works in  
4 the Addiction Research Unit, Institute of  
5 Psychiatry Maudsley Hospital, London"; correct?

6 A. Maudsley, okay.

7 Q. The second sentence -- the second  
8 paragraph then says, quote, "The talk which  
9 Dr. Russell gave seemed to be based on a paper  
10 which he published last year, and he began by  
11 quoting the opening sentence to this paper";  
12 correct?

13 A. Well, that's what it's saying.

14 Q. And his opening sentence is, quote,  
15 "Cigarette smoking is probably the most addictive  
16 and dependence-producing form of object-specific,  
17 self-administered gratification known to man";  
18 correct?

19 A. That's what it says. I don't know  
20 that I understand all that.

21 Q. Well, basically, what he is saying  
22 is that cigarette smoking is addictive; correct?

23 A. Well --

24 MR. WALLACE: Objection. The  
25 document speaks for itself.

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1 A. He has a quoted opinion there.

2 Q. Well, let's go down to the  
3 paragraph where it says, "Dr. Russell began by  
4 comparing cigarette addiction with that produced  
5 with other drugs."

6 Do you see that?

7 A. Where is -- okay.

8 Q. It says, "Dr. Russell began by  
9 comparing cigarette addiction with that produced  
10 by other drugs. He stated three out of four  
11 smokers have tried to or wished to give up  
12 smoking, but only one in four are successful in  
13 stopping permanently"; correct?

14 A. Okay.

15 Q. And you would agree that that's  
16 basically true; correct?

17 MR. WALLACE: Objection, no  
18 foundation.

19 A. I don't know whether it's true or  
20 not, and personally, I don't even believe that  
21 that is true.

22 Q. Do you have any understanding or  
23 has American Tobacco done any research on the  
24 number of people who have tried to give up smoking  
25 compared to the number of people who actually have

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1 given up smoking?

2 A. Not to my knowledge.

3 Q. So, you don't have any information  
4 which would dispute that claim; correct?

5 A. No, nor do I have any that proves  
6 it, either.

7 Q. Is that because you at American  
8 Tobacco never did any research on that subject?

9 A. We were not qualified to do that.

10 Q. You could have hired it out;  
11 correct?

12 A. We could have, yes.

13 Q. You could have found people who  
14 were capable of doing that research; correct?

15 A. That's right.

16 Q. American Tobacco never spent that  
17 money, did they?

18 MR. WALLACE: Objection, assumes  
19 facts not in evidence. There have been no  
20 questions along that line to this point. If you  
21 ask him, you may actually discover what the facts  
22 are?

23 MR. O'FALLON: Is that an  
24 objection, sir?

25 MR. WALLACE: Any time I open my  
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1 mouth, it's going to be an objection. You don't  
2 need to ask me that.

3 MR. O'FALLON: Then why don't you  
4 say "objection," and just limit it to the --

5 MR. WALLACE: I'm looking at the  
6 text here, it began with "Objection."

7 MR. O'FALLON: Short basis, okay?

8 MR. WALLACE: That will be your  
9 red flag that it's an objection, sir.

10 MR. O'FALLON: I understand that  
11 you like to make long-winded speeches about your  
12 objections.

13 MR. WALLACE: It was three lines.

14 MR. O'FALLON: That's three lines  
15 too many.

16 MR. WALLACE: Well, that's your  
17 opinion, Mr. O'Fallon, and you seem to have a lot  
18 of them and you seem to express them quite  
19 vituperatively, and I'm sure you will continue to.

20 MR. O'FALLON: Are you done now?

21 MR. WALLACE: I'm no longer  
22 speaking. That would lead you to believe that I'm  
23 done, sir, yes.

24 MR. O'FALLON: Thank you. Why  
25 don't we have that read back?

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1 (Record read.)

2 MR. WALLACE: Objection, vague and  
3 ambiguous.

4 A. I don't really even know what  
5 money, because we didn't have any money  
6 allocated -- wasn't anything not to spend.

7 Q. Well, certainly, the corporation  
8 had plenty of funds at its proposal -- at its  
9 disposal to fund that research, if it chose to  
10 fund that research; correct?

11 A. I'm sure, and since we didn't  
12 believe that nicotine was addicting, it didn't  
13 seem like there was any sense in carrying that  
14 out.

15 Q. No sense --

16 A. But having said that, that's my  
17 opinion.

18 Q. No sense to go gather facts about  
19 that?

20 MR. WALLACE: He's not finished.  
21 Please let him complete his response.

22 A. There was a policy decision made in  
23 the president's office, not in R&D.

24 Q. So, it's your testimony that the  
25 policy decision not to spend money on researching

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1 addiction was made at the highest levels of the  
2 company; correct?

3 MR. WALLACE: Assumes facts not in  
4 evidence, calls for speculation.

5 A. Office of the president --

6 MR. WALLACE: Excuse me, sorry.  
7 Assumes facts not in evidence, calls for  
8 speculation. I'm sorry, Byron. Go ahead.

9 A. In American Tobacco, anything to do  
10 with the policy was set by the office of  
11 president, so anything I say on that has to be  
12 couched with the -- with that statement, because I  
13 wasn't involved with that.

14 Q. Dr. Russell then apparently went on  
15 to state that, quote, "After smoking one  
16 cigarette, only 15 percent of people avoid  
17 becoming dependent on cigarettes"; correct?

18 A. Only 15 percent. Okay, that's what  
19 it says.

20 Q. And the next paragraph, he says,  
21 "Of 500 American veterans of the Vietnam war who  
22 had taken heroin, 7 percent were dependent on the  
23 drug and 66 percent had stopped taking it all  
24 together"?

25 A. That's what he said.

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1 Q. Of 7,000 cannabis smokers, 20  
2 percent were found to be drug-dependent, 27  
3 percent had been able to stop smoking cannabis, 25  
4 percent smoked occasionally, and 7 percent took  
5 the drug more than three times a week"; correct?

6 A. That's what it says.

7 Q. It then goes on to state, quote,  
8 "This is said to indicate that other drugs are not  
9 nearly as dependent-producing as tobacco";  
10 correct?

11 A. That's what it said.

12 Q. "Even" --

13 A. Provided you buy into that, okay?

14 Q. Well, this is an expert that  
15 apparently Gallaher is consulting with; correct?

16 A. Uh-huh -- okay.

17 MR. WALLACE: Objection. I think  
18 that mischaracterizes the testimony in the record  
19 evidence at this point.

20 A. I don't know that they have  
21 actually signed a contract or doing any direct  
22 work yet. It's a conference.

23 Q. It then goes on to state, quote,  
24 "Even heroin addicts rate cigarette smoking as  
25 their most," quote, "needed," end quote, "drug"?

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1           A.       "Most needed drug," that's what it  
2 says. Sounds like a strange conclusion to me  
3 though.

4           Q.       You would agree that Dr. Russell is  
5 imminently more qualified to make that conclusion  
6 than you are; correct?

7           A.       He certainly is, but I'm certainly  
8 free to my opinion.

9           MR. O'FALLON: I would next like to  
10 mark an exhibit Bates stamp numbered 100503495  
11 through 3506.

12                   (Plaintiffs' Exhibit 1134 was  
13 marked for identification.)

14          Q.       Have you seen this document  
15 previously?

16          A.       Yes, I believe I did.

17          Q.       And just for the record, what is  
18 the exhibit number that was given to this  
19 document?

20          A.       1134.

21          Q.       Plaintiffs' Exhibit 1134 is a  
22 document that's been produced by BAT Co Limited,  
23 and it's authored by a gentleman named Colin  
24 Greig.

25                   Do you know who Dr. Greig is?

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1 A. No.  
2 Q. You've never heard that name?  
3 A. No.  
4 Q. Let's look at page 496, last three  
5 Bates numbers.

6 At the top is entitled "Structural  
7 Creativity Group, Thoughts by C.C. Greig, R&D,  
8 Southampton Marketing Scenario."

9 He states, "Before starting on any  
10 future scenario, let us look at what we are  
11 currently selling and where and how it was  
12 developed."

13 MR. WALLACE: "Has developed."

14 MR. O'FALLON: "Has developed."

15 Q. He then states, quote, "A cigarette  
16 as a drug-administration system for public use has  
17 very, very significant advantages"; correct?

18 A. Yeah.

19 Q. He says, "Speed, within 10 seconds  
20 of starting to smoke, nicotine is available in the  
21 brain"; correct?

22 A. That's what he said.

23 Q. You would agree with that  
24 statement; correct?

25 A. Probably so.

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1 Q. The last sentence of that section  
2 entitled "Speed," says, quote, "Other drugs, such  
3 as marijuana, amphetamines and alcohol are slower  
4 and may be mood-dependent"; correct?

5 MR. WALLACE: "Drugs" is in  
6 quotation marks, Mr. O'Fallon, so --

7 A. It reads that way.

8 Q. And you would agree with that;  
9 correct?

10 A. I have no knowledge about that, but  
11 I have to say at this time.

12 Q. Excuse me?

13 A. Trying to characterize a drug  
14 administration system like that -- a cigarette is  
15 just not a drug-administration system. It's a  
16 whole concept. It's not the same thing.

17 Q. Apparently, Mr. Greig would  
18 disagree with you?

19 A. Well, that's fine, but there's just  
20 too much to smoking.

21 If there's a drug addiction system,  
22 people would -- they can get nicotine in some  
23 other form, and they wouldn't need to be smoking.

24 Q. You would agree that nicotine is --  
25 that cigarette smoke taken into the lung is the

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1 most efficient way to deliver nicotine; correct?

2 A. I'm not sure that it is.

3 Q. Nicotine gets to the brain faster  
4 via the lung than it does through any other route  
5 of administration; isn't that correct?

6 A. It may be, but to characterize it  
7 as an administration system, that's just wrong.

8 Q. And you would agree that nicotine  
9 is a drug; right?

10 A. Some people may characterize it  
11 that.

12 Q. You would agree --

13 A. It's certainly a chemical that's in  
14 tobacco, too.

15 Q. You would agree that smokers can  
16 titrate their level of nicotine; correct?

17 A. I don't think so.

18 Q. Did American Tobacco ever do any  
19 studies concerning whether or not smokers smoke  
20 for a certain specific dose of nicotine?

21 A. No.

22 Q. Why not?

23 A. Well, I guess we didn't see any  
24 need to.

25 Q. Didn't want to spend that money;

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1 right?

2 A. I don't think it has to do with  
3 that. We've spent a lot of money to design a  
4 cigarette. It has taste, it has a nice look, and  
5 that people enjoy smoking. If they wanted, they  
6 can get cigars -- they can smoke all sorts of  
7 other things.

8 Q. You usually don't inhale cigar  
9 smoke into your lung, do you, sir?

10 A. I don't. Some people do.

11 Q. You understand that more nicotine  
12 is absorbed through the lung than is absorbed  
13 through the oral cavity, the mouth; correct, sir?

14 A. I don't know that for sure.

15 Q. Do you think American knew that?

16 A. Don't know.

17 Q. Think they should?

18 A. No.

19 Q. Don't think it would be helpful for  
20 a company who sells a product that makes billions  
21 of dollars a year to know something about that  
22 product?

23 MR. WALLACE: Objection as to  
24 form.

25 Objection. The question is  
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1 argumentative.

2 A. The notion of the company doing  
3 work that it's -- on addiction or some sort of  
4 dose response, it's not capable of doing that. We  
5 don't -- we didn't have those facilities in-house.

6 Q. You could have acquired those  
7 facilities if you chose to; correct?

8 A. Probably so.

9 Q. You just -- and again, "you"  
10 meaning The American Tobacco Company and American  
11 Brands -- simply chose not to spend that money;  
12 correct?

13 MR. WALLACE: Objection. I don't  
14 think there's been any testimony to this point  
15 about that, and I think you're misrepresenting the  
16 record evidence and his testimony.

17 A. I don't know if that's true or not  
18 true. All I know, it's a policy decision made by  
19 the office of president.

20 Q. At the highest levels of the  
21 company?

22 A. Absolutely.

23 Q. Let's look on page 497. Mr. Greig  
24 talks about the future.

25 Do you see that paragraph?

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1           A.       "The future" with a question mark,  
2     okay.

3           Q.       He says, "Thus, we have an emerging  
4     picture of a fast, highly pharmacologically  
5     effective and cheap," parenthetical, "drug," end  
6     parenthetical, comment --

7           MR. WALLACE:   It's not a  
8     parenthetical, it's a quote.

9           MR. O'FALLON:   I'll start again.  
10    Thank you for your correction.

11          Q.       Quote, "Thus we have an emerging  
12    picture of a fast, highly pharmacologically  
13    effective and cheap," quote, "drug," end quote,  
14    "tobacco, which also confers flavor and manual and  
15    oral satisfaction to the user. There are no" --  
16    "there are other things about tobacco, though. It  
17    is legal, as is alcohol, but not marijuana and  
18    LSD, and the articles themselves are eminently  
19    portable"; correct?

20          A.       That's what it said.

21          Q.       Okay. Let's look at the very last  
22    page of this document with writing on it. There's  
23    a last page that doesn't have writing, Bates  
24    number, last three -- last four numbers, 3505.

25                    Do you see that?

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1 A. Okay.  
2 Q. This is his summary; correct?  
3 A. It says "Summary."  
4 Q. It says, "So, give them what they  
5 want" -- strike that.

6 "So, give them what they seem to  
7 want, taste and value. And always remember that,  
8 while King James the I issued his famous  
9 Counterblaste to Tobacco in 196" -- "in 1604, it  
10 is nicer from our point of view to remember Oscar  
11 Wilde's words in," quote, "The Picture of Dorian  
12 Gray in 1891," and then it gives the quote.

13 Quote, "A cigarette is the perfect  
14 type of a perfect pleasure. It is exquisite and  
15 it leaves one unsatisfied. What more could one  
16 want?"

17 Could you agree with that?  
18 MR. WALLACE: Hold on a second.  
19 Are you asking whether you've read it correctly or  
20 whether he agrees with it, what's read?

21 MR. O'FALLON: I'm asking if  
22 whether he agrees with Dorian Gray with Oscar  
23 Wilde.

24 MR. WALLACE: Objection as to the  
25 lack of foundation. I don't think you've

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1 established he ever read Oscar Wilde, "The Picture  
2 of Dorian Gray."

3 MR. O'FALLON: Well, let's go back  
4 and restate the question, since counsel seems to  
5 have some problems.

6 MR. WALLACE: I don't have any  
7 problems, Mr. O'Fallon, I have an objection, and I  
8 have stated it, and I'm tired of you referring to  
9 my objections as "problems" and "interruptions."  
10 They are objections.

11 MR. O'FALLON: Are you done?

12 MR. WALLACE: Once again, you  
13 should view me stopping speaking as being done,  
14 which I did.

15 MR. O'FALLON: Good.

16 Q. Would you agree with the quote from  
17 Dorian Gray written by Oscar Wilde that, quote, "A  
18 cigarette is the perfect type of a perfect  
19 pleasure. It is exquisite and it leaves one  
20 unsatisfied. What more can one want"?

21 A. I don't know that I agree with  
22 that.

23 Q. Mr. Greig goes on to say, "Let us  
24 provide the exquisitess, and hope that they, our  
25 consumers, continue to remain unsatisfied. All we

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1 would want then is a larger bag to carry the money  
2 to the bank."

3 Would you agree with that?

4 MR. WALLACE: Well, hold on a  
5 second before you answer.

6 A. No.

7 MR. WALLACE: Are you asking  
8 whether Mr. Prices agrees you've read it  
9 correctly, Mr. O'Fallon, or whether he agrees with  
10 the sentiments expressed therein.

11 MR. O'FALLON: You know, sir, I  
12 don't think my question is all that vague. I'm  
13 asking whether he agrees with the statements.

14 MR. WALLACE: Well, I don't care  
15 whether you think it's vague or not, I did, and  
16 that's the basis for the objection. You proceed  
17 at your own peril, sir. Go ahead.

18 MR. O'FALLON: Yeah, my own peril  
19 from you.

20 Let's go back.

21 Q. Once again, let me clarify. Do you  
22 agree with the following statement made by  
23 Mr. Greig in this document, quote, "Let us provide  
24 the exquisitess, and hope that they, our  
25 consumers, continue to remain unsatisfied. All we

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1 would want then is a larger bag to carry the money  
2 to the bank"?

3 A. No, I don't agree with that.

4 MR. O'FALLON: Why don't we take a  
5 lunch break then and be back at 1:00, if that's  
6 acceptable.

7 MR. WALLACE: Be back at 1:15.

8 MR. O'FALLON: Whatever.

9 (Luncheon recess - 12:00 p.m. to  
10 1:20 p.m.)

11 CONTINUED BY MR. O'FALLON:

12 Q. Mr. Price, are you ready to  
13 proceed?

14 A. Sure.

15 Q. I just want to make one clarifying  
16 statement to clarify the record.

17 Earlier, I had shown you a document  
18 that was Bates stamped TIMN 0107822 through 823  
19 dated September 9th of 1980, and I stated that  
20 that document had been previously marked in a  
21 Reynolds deposition.

22 At lunch, counsel for Lorillard was  
23 kind enough to provide me with the number for  
24 that, and that was Plaintiffs' 113, so just so the  
25 record is clear --

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1 MR. WALLACE: That's 1113.

2 MR. O'FALLON: Oh, I'm sorry.

3 You're right, 1113. Thank you.

4 MR. WALLACE: That was marked  
5 during the RJR Dep. on Friday?

6 MR. O'FALLON: Right -- just so we  
7 have consistency on the numbers.

8 MR. WALLACE: Sure. All right.  
9 Thank you.

10 Q. I would now like to turn to the  
11 issue of research and development activities.

12 A. Okay.

13 Q. I would like to hand you a document  
14 that's been previously marked as Plaintiffs'  
15 Exhibit 32.

16 MR. WALLACE: Thank you.

17 Q. This is a document Bates stamp  
18 numbered 0000126972 through 6984. It's a document  
19 produced by Philip Morris.

20 I'm going to ask you to look at  
21 this document, and I'm going to read some  
22 statements in it and ask if you agree.

23 This is from a -- from an

24 H. Wakeham.

25 Do you know who Helmut Wakeham is?

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1 A. Helmut Wakeham.  
2 Q. And he was a researcher with Philip  
3 Morris; correct?  
4 A. That's correct.  
5 Q. At one point, was he the head of  
6 the research division?  
7 A. Yes, he was.  
8 Q. And are you familiar with him?  
9 A. Yes, I'm familiar with him.  
10 Q. He states in the first paragraph  
11 that "Most Philip Morris products, both tobacco  
12 and nontobacco, are directly related to the health  
13 field."

14 THE COURT REPORTER: I'm sorry,  
15 could you repeat that?

16 Q. He said, "Most Philip Morris  
17 products, both tobacco and nontobacco, are  
18 directly related to the health field."

19 A. Okay.

20 Q. Would you agree with that  
21 statement?

22 A. Well, no, I can't agree or  
23 disagree. I mean, that's what it says, but I know  
24 nothing -- I don't know what he's talking about.

25 Q. As a representative of American

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1 Tobacco Company, would you believe or agree that  
2 tobacco, in particular, is directly related to the  
3 health field?

4 MR. WALLACE: Objection, vague and  
5 ambiguous.

6 A. I don't make that connection, no.

7 Q. And he goes on to say, "Consumer  
8 health is a focal point of interest and concern to  
9 the general public and to the government. The  
10 trend is a natural one which attends an affluent  
11 society."

12 Would you agree with that?

13 A. Those are Mr. Wakeham's  
14 statements. I don't really -- "consumer health is  
15 a focal point."

16 Okay. "Consumer health is a focal  
17 point and concern to the general public" -- sure,  
18 that's nice. That's all right. I'm sorry.

19 Q. Do you think it should also be a  
20 focal point of interest for American Tobacco  
21 Company?

22 A. Consumer health?

23 Q. Yes.

24 A. You mean in general?

25 Q. Yes.

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1 A. Sure.

2 Q. And specifically, as it relates to  
3 American Tobacco's products, do you believe it  
4 should be a focal point?

5 A. Yeah, I think that was stated.

6 Q. Do you think it was -- it goes on  
7 to say that -- "There is every indication that  
8 technically, sociologically and economically, we  
9 will have to deal with" --

10 THE COURT REPORTER: I'm sorry.  
11 Could you slow down a little, please?

12 Q. "There is every indication that  
13 technically, sociologically and economically, we  
14 will have to deal with an ever-increasing concern  
15 for the health aspects of our products.  
16 Consequently, if R&D is to fulfill its technical  
17 responsibilities, we will require significantly  
18 increased capabilities to investigate the health  
19 implications, not only in tobacco, but also in  
20 gum, confections and the medical products field."

21 Let me just ask you: Do you agree  
22 as to American Tobacco that in order for you to  
23 fulfill your technical responsibility, you needed  
24 significantly increased capabilities to  
25 investigate the health implications of tobacco?

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1 MR. WALLACE: Objection as to  
2 form.

3 A. Me as a researcher worked in a  
4 chemical laboratory. We didn't investigate  
5 health-related capabilities.

6 Q. And at any time during your tenure  
7 with the American Tobacco Company, did American  
8 Tobacco conduct in-house research on the health  
9 effects of its products?

10 MR. WALLACE: Objection, asked and  
11 answered.

12 A. I think, as I understand it, we do  
13 in-house biological research; is that what you're  
14 saying?

15 Q. Actually, my question is: Did you  
16 do in-house research on the health aspects of  
17 tobacco?

18 A. No, sir.

19 Q. Would you agree that a company has  
20 an obligation and duty to investigate its own  
21 products and determine any health problems with  
22 its own products?

23 MR. WALLACE: Objection, to the  
24 extent the question calls for a legal conclusion.

25 A. The company certainly has a

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1 responsibility to have concern for its customers.

2 Q. Does it have an obligation to  
3 undertake investigation in order to determine any  
4 dangers of its products?

5 MR. WALLACE: Objection as to  
6 form. Objection to the extent it calls for a  
7 legal conclusion.

8 A. I don't know that the -- it has an  
9 obligation to carry out its own work. It can  
10 certainly go and sponsor work, and that would, I  
11 think, fit that -- fit that scenario.

12 Q. Did American Tobacco fund work  
13 other than its funding of the work done by --

14 MR. O'FALLON: Let's go off the  
15 record.

16 (Discussion off the stenographic  
17 record.)

18 Q. Other than the funding that  
19 American Tobacco gave to The Council for Tobacco  
20 Research, which was also known as TIRC, did  
21 American fund any other outside smoking and health  
22 research?

23 A. We had -- American had funded a  
24 continuing program at the Medical College of  
25 Virginia from somewhere in the 19 -- late 1930s on

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1 up, and I'm not exactly sure, but somewhere into  
2 the very late '70s.

3 Q. And did that work specifically  
4 involve the health aspects of smoking?

5 MR. WALLACE: Objection as to  
6 form.

7 THE WITNESS: Tell me a little more  
8 what you mean by "health aspects."

9 Q. Did you look at the issue of  
10 whether cigarette smoking caused cancer?

11 A. The program at the Medical College  
12 of Virginia was carried out completely by them and  
13 dealt with many different aspects. Whether there  
14 was any specifically on cancer causation, I don't  
15 recall, but this -- papers from -- the work from  
16 this program was all published in reputable  
17 journals.

18 MR. O'FALLON: Move to strike as  
19 non-responsive.

20 Q. As best you can recall, the Medical  
21 College of Virginia research did not involve  
22 specific research concerning whether cigarette  
23 smoke caused cancer?

24 MR. WALLACE: Objection. The  
25 question has been asked and answered.

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1                   You can answer, Mr. Price --

2                   THE WITNESS: Okay.

3                   MR. WALLACE: -- again.

4                   A.       I don't know specifically whether  
5       it had a direct link to the direct work on cancer  
6       causation. Some of the research may have been,  
7       but it was a wide spectrum of work. All has been  
8       published, to my knowledge.

9                   Q.       Did American ask the Medical  
10       College of Virginia to look specifically at the  
11       issue of whether cigarette smoking causes  
12       emphysema?

13                  A.       I don't know that.

14                  Q.       Did American Tobacco Company ask  
15       the Medical College of Virginia to determine  
16       whether or not cigarette smoking causes heart  
17       disease?

18                  A.       I don't believe -- I don't know  
19       that for sure.

20                  Q.       Did The American Tobacco Company  
21       ask the Medical College of Virginia to determine  
22       whether or not cigarette smoking causes  
23       obstructive lung disease?

24                  A.       I don't know that either. This  
25       research was not guided -- not to be guided

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1 specifically by The American Tobacco Company, to  
2 the best of my knowledge.

3 Q. And it's your testimony that all  
4 the research that was done at the Medical College  
5 of Virginia on behalf of the American Tobacco  
6 Company has been published?

7 MR. WALLACE: Asked and answered.  
8 That's what the man said.

9 A. To the best of my knowledge, yes.  
10 I don't know -- I would not have known was there  
11 work that was not published, but I do know that a  
12 lot was.

13 Q. So, you can't testify with any  
14 certainty that all the work done on behalf of  
15 American Tobacco has been published; correct?

16 MR. WALLACE: Objection, asked and  
17 answered.

18 I think now you're  
19 mischaracterizing his testimony, sir.

20 A. I can't -- with certainty -- I can  
21 have some certainty, but I don't know a hundred  
22 percent, but maybe 90, I don't know that, but I do  
23 know that most of it was, for sure.

24 Q. Do you know whether when that work  
25 was published, American Tobacco funding was

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1 attributed in those publications?

2 A. I don't know. There were -- there  
3 were summaries printed up that biological work  
4 funded in whole or in part by American Tobacco  
5 Company. Whether that was an attribution on all  
6 publications, don't know that.

7 Q. Let's look on page 6980 on the  
8 document you have in front of you, Plaintiffs'  
9 Exhibit 32, down to the middle paragraph and the  
10 second half of the middle paragraph.

11 A. Uh-huh.

12 Q. It says, "The American Tobacco  
13 Company in its new facilities at Bermuda Hundred  
14 has included several animal rooms, one for dogs,  
15 and one for smaller animals, as well as an autopsy  
16 room. Further, the biomedical work supported by  
17 American Tobacco at the Medical College of  
18 Virginia under the supervision of Dr. Arthur  
19 Burke, M.D., was relocated under conditions of  
20 extreme secrecy during this past summer from the  
21 college to their new research facilities at  
22 Bermuda Hundred."

23 Now, is it your understanding that,  
24 in fact, the medical work supported at the Medical  
25 College of Virginia was not relocated to Bermuda

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1 Hundred?

2 A. Yes. The American -- the American  
3 Tobacco-funded work, the Department of  
4 Pharmacology remained at the Medical College of  
5 Virginia, always has -- always was there.

6 Q. And all of the work that was done  
7 at the Medical College of Virginia, none of that  
8 work was moved in any fashion to Bermuda Hundred?

9 A. Never.

10 Q. So, when they state that some  
11 studies are still being continued at the medical  
12 college, but the major portion is now within their  
13 own house, that's an incorrect statement?

14 A. Well, this is a letter from Wakeham  
15 to Goldsmith. That's Philip Morris. That's a  
16 different company. His information is incorrect.

17 MR. O'FALLON: I'm going to ask the  
18 Court Reporter to mark as an exhibit a document  
19 Bates stamped MNAT 00374276 through 4280.

20 (Plaintiffs' Exhibit 1135 was  
21 marked for identification.)

22 Q. What's that document been marked,  
23 sir?

24 A. 1135.

25 Q. Plaintiffs' Exhibit 1135 is a  
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1 document that states at the top, "The Importance  
2 of Biological Research."

3 Have you seen this document  
4 previously?

5 A. I don't think so.

6 Q. Is it your understanding that this  
7 is a document produced out of American Tobacco's  
8 files?

9 A. Yeah.

10 Q. Would you turn to --

11 A. I'm trying to look at the date --  
12 41 -- 2-3-41?

13 Okay.

14 Q. Would that seem to make sense?  
15 MR. WALLACE: I think he's just  
16 looking for some context in which to put it,  
17 Mr. O'Fallon.

18 A. Initials EH, Ed Harlan -- okay.

19 Q. Would '41 make sense?

20 A. Well, that's pretty far back for  
21 even him to be making that -- making this  
22 summary.

23 Okay. I don't know.

24 Q. Because that's actually one of my  
25 questions, is the timing of this, but maybe if we

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1 read through it, we'll be able to give you some  
2 context and you can at least give us a general  
3 time frame for this document.

4 On the first page, it says that "It  
5 may be assumed that the medical profession is the  
6 group which it is most desired to reach and  
7 convince"; correct?

8 A. Yes.

9 Q. And it says, "We have entered the  
10 opinion that they are less skeptical than other  
11 scientific groups and are easier to convince, if  
12 properly approached."

13 A. Okay.

14 Q. Down in the third paragraph, it's  
15 stated that, quote, "The only kind of research  
16 which may be expected to impress the medical  
17 profession is that obtained by the pharmacologist  
18 or the physiologist in a biological laboratory.  
19 It was a recognition of this fact that prompted  
20 us to provide for a biological department when the  
21 research laboratory was designed."

22 Do you see that statement?

23 A. Yes, I do.

24 Q. Based on your knowledge of the  
25 history of American Tobacco's research facility,

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1 would that date this document sometime in that  
2 time frame when you had -- had or were about to  
3 move into the Bermuda Hundred facility?

4 A. No. This is -- if this date is  
5 correct, 2-3-41, the initial research laboratory  
6 for the company was built in 1938, so this has to  
7 be talking something predating anything we have  
8 been talking about by more than 20 some years.

9 Q. Okay. How about Dr. Haag, when did  
10 he first begin at ATC Europe; do you know?

11 A. I think his name is Haag.

12 Q. Haag -- I'm sorry.

13 A. Well, he's not here. Haag was at  
14 the Medical College of Virginia beginning sometime  
15 in the '30s. I don't know any more than that --  
16 probably '37, '38.

17 Q. Let's look on page 2, the second  
18 paragraph. It says, "In our judgment, the  
19 connection with the Medical College of Virginia  
20 has been very productive. Aside from the  
21 information secured through their research, we  
22 have been impressed with the completeness with  
23 which the staff of the Medical College has been,"  
24 quote, "sold American," end quote.

25 Do you understand what that means?

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1 A. Not at all.

2 Q. It says, "This encourages the  
3 belief that if our activities were better known,  
4 more medical men could be brought into the fold.  
5 We feel, therefore, that more emphasis should be  
6 placed on biological research, and that we should  
7 add to our staff in this department."

8 Other than the time that you've  
9 talked about where I believe Dr. Burke came on to  
10 consider -- to head up the biological department,  
11 is there any other point in American Tobacco's  
12 history that you know of where you, in fact, added  
13 people to do biological research?

14 MR. WALLACE: Objection, assumes  
15 facts not in evidence, compound question.

16 A. I don't believe that there were any  
17 people that were, quote, "added" to American's  
18 staff. If American gave more money for other  
19 people to work at the Medical College of Virginia,  
20 then it was a grant, and as far as I know, it's  
21 always been a grant.

22 Q. So, I guess it's your testimony  
23 that other than the one point in time, there was  
24 no time that American Tobacco did biological  
25 research in-house?

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1 MR. WALLACE: Objection. That's  
2 been asked and answered at least three or four  
3 times now.

4 MR. O'FALLON: I know, but the  
5 documents seem to be somewhat confusing on that,  
6 so I'm asking him if he relied on these  
7 documents.

8 A. Well, let me state it this way: In  
9 the time frame that we talked about earlier from  
10 about 1965ish to maybe '70, approximate times,  
11 there was no biological -- there was no biological  
12 program being conducted in-house, so it shouldn't  
13 be stated that way.

14 Q. Let's go to the bottom of page 2,  
15 last four numbers, 4277?

16 A. 427 -- okay.

17 Q. At the bottom of the page, it says,  
18 "By developing its biological division, the  
19 research laboratory should be able in a few years  
20 to establish itself as an authority, not only in  
21 the field of chemical research on tobacco, but  
22 also in the field of biological and physiological  
23 research as they pertain to tobacco."

24 You would agree with that  
25 statement; correct?

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1 MR. WALLACE: Objection. If you're  
2 asking Mr. Price whether you read it correctly,  
3 that's one thing.

4 Are you asking him whether he  
5 agrees with it in concept?

6 MR. O'FALLON: Counsel, just state  
7 your objection.

8 MR. WALLACE: It's on the record.

9 MR. O'FALLON: Did I ask him if I  
10 read it correctly; no.

11 Q. Let's go back. Once again, counsel  
12 insists on interrupting, so let's go back.

13 The document states, quote, "By  
14 developing its biological division, the research  
15 laboratory should be able in a few years to  
16 establish itself as an authority, not only in the  
17 field of chemical research on tobacco, but also in  
18 the field of biological and physiological research  
19 as they pertain to tobacco."

20 That's what the document says;  
21 correct?

22 A. That's what it says.

23 Q. Do you agree with that?

24 A. Well, you're asking me do I agree  
25 with what it says. I think, yes, but it -- do I

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1 agree with that's what's happened or to the best  
2 of my knowledge, did it happen that way; I haven't  
3 the foggiest notion. That's too long ago.

4 Q. At the bottom of page 3, they are  
5 talking about potentially hiring a head of the  
6 biological division a gentleman named Dr. Larsen.

7 Do you ever remember hearing of  
8 someone named "Dr. Larsen"?

9 A. I must not have a --

10 MR. WALLACE: What page are you  
11 referring to?

12 THE WITNESS: Three?

13 MR. O'FALLON: Page 3.

14 THE WITNESS: Bottom, you say?

15 MR. O'FALLON: That's right.

16 Q. Well, let's read it.

17 A. Okay. I've got the last two  
18 sentences. I was up too far.

19 Q. Let's read it so the record is  
20 clear and there's no confusion.

21 It says, "As a result of  
22 discussions with Mr. Neiley, Dr. Haag has asked  
23 nearly" -- "was asked nearly a year ago to look  
24 about for a man having the desired  
25 qualifications. He should combine ability and

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1 experience with a broad-minded attitude toward the  
2 tobacco industry. It was not until recently that  
3 Dr. Haag could find anyone whom he considered  
4 well-qualified for the position. He has now  
5 recommended Dr. Larsen, who is a young  
6 physiologist with a good background, experience  
7 and a fine personality."

8 Do you recall ever hearing of a  
9 Dr. Larsen?

10 A. Yes.

11 Q. And when did you hear of that  
12 gentleman?

13 A. Well, first heard of him maybe late  
14 '60s, 1970s, or sometime probably when Arthur  
15 Burke was around. He had -- the library was quite  
16 familiar with him. He had -- along with Haag had  
17 authored a complete review of all work known at  
18 the time, and I have forgotten the exact date of  
19 publication, but a treatise on tobacco and other  
20 associated biological work -- biological work.

21 All these papers, documents, and so  
22 on, were given to the surgeon general, then, later  
23 on before the first report. That's about what I  
24 know of Dr. Larsen.

25 Q. Did you ever recall a time when  
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1 Dr. Larsen was being considered for a position  
2 with the American Tobacco Company?

3 A. Nope.

4 Q. Do you know whether at any point in  
5 time he was ever actually hired by American  
6 Tobacco?

7 A. To the best of my knowledge, he has  
8 always been on the staff of the Medical College of  
9 Virginia.

10 Q. On page 4, the first full paragraph  
11 states that "Although Dr. Larsen seems to be  
12 splendidly equipped for the position, I feel that  
13 we should not take him into our staff directly,  
14 and I therefore asked Dr. Haag if some arrangement  
15 could be made whereby the Medical College might  
16 secure his services on the basis of a grant";  
17 correct?

18 A. That's what it says.

19 Q. It says, "Dr. Sanger, president of  
20 the Medical College, has been very cooperative.  
21 Of course, the Medical College of Virginia would  
22 receive nothing for their good offices, the only  
23 advantage being to us; namely, if for any reason  
24 it was decided at the end of the year that he was  
25 not the proper man for the place, or because of a

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1 change in policy, we would not desire to continue  
2 with the promotion of the biological laboratory,  
3 his connection could be severed" -- "severed  
4 without embarrassment to us."

5 Do you know whether that is, in  
6 fact, what occurred, he remained a member of the  
7 Medical College?

8 A. As far as I know, he has always  
9 been a member of the Medical College, many years  
10 after this.

11 Q. And, of course, the decision was  
12 made to not go forward with the promotion of the  
13 biological laboratory?

14 A. Well, that's so long ago, I assumed  
15 that that's the case. I don't know that for sure.

16 Q. Is it your understanding that there  
17 is a tacit agreement among the tobacco  
18 manufacturers not to do in-house biological  
19 research?

20 A. A tacit agreement? Not that I know  
21 of.

22 Q. I'm going to show you a document  
23 that's been previously marked as Plaintiffs'  
24 Exhibit 140.

25 This is a document Bates stamp  
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1 numbered 110315968 through 971 entitled "Meeting  
2 with Dr. Helmut Wakeham, Vice President and  
3 Director of Research, Philip Morris, Inc., 10,  
4 September, 1970"; correct?

5 A. Yes.

6 Q. This is a document that's been  
7 produced by British-American Tobacco Company?

8 A. Okay -- British-American.

9 MR. WALLACE: Are you asking if he  
10 knows that or are you telling him, Mr. O'Fallon?

11 MR. O'FALLON: Well, you at one  
12 point complained when I didn't identify the  
13 source.

14 MR. WALLACE: I understand that,  
15 sir.

16 MR. O'FALLON: So, I'm identifying  
17 it, sir.

18 MR. WALLACE: Okay. So, you're  
19 telling him it was, you're not asking him if it  
20 was?

21 MR. O'FALLON: Got some confusion  
22 there, sir?

23 MR. WALLACE: My comment is on the  
24 record, Mr. O'Fallon.

25 MR. O'FALLON: Oh, is your

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1 confusion now resolved?

2 MR. WALLACE: No, it's not, but you  
3 go right ahead, sir.

4 Q. Okay. Sir, I'll represent to you  
5 and to your counsel that this is a document that  
6 was produced out of the files of British-American  
7 Tobacco Company.

8 A. Okay.

9 Q. And I'm just making that as a  
10 statement, I'm not asking you to verify that.

11 A. Okay.

12 Q. Let's look on the second page of  
13 this document.

14 Specifically, under "Philip Morris  
15 Affairs," and this is Bates number -- last three  
16 Bates numbers, 969.

17 Do you see that paragraph?

18 A. All right, uh-huh.

19 Q. Under that, it says, "One result of  
20 the greater influence which Wakeham has with  
21 Dr. J. Cullman has been the agreement, albeit  
22 reluctant, to permit Philip Morris to do in-house  
23 biological work. When this was first mooted,  
24 Wakeham was told that there was a tacit agreement  
25 between the heads of the U.S. companies that this

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1 would not be done"; correct?

2 A. Well, if you're asking me if that's  
3 what it says, yes.

4 Q. Was it your understanding that  
5 there was such a tacit agreement?

6 MR. WALLACE: Objection, asked and  
7 answered.

8 A. To the best of my knowledge, there  
9 was no agreement.

10 Q. If there were an agreement,  
11 American Tobacco certainly did its part by not  
12 engaging in in-house biological research; correct?

13 MR. WALLACE: Objection. The  
14 question is argumentative and it calls for  
15 speculation, and it assumes facts not in  
16 evidence.

17 A. I don't know whether the situation  
18 with American doing or not doing in-house  
19 biological research has any relation to this.

20 Q. In any event, American's failure to  
21 do in-house biological research was certainly  
22 consistent with that agreement; correct?

23 MR. WALLACE: Objection -- same  
24 objections.

25 A. Well, American always continued  
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1 this through this time period, to support the  
2 Medical College of Virginia and kept its program  
3 going there, so it wasn't like it just stopped its  
4 programs all together.

5 We were apparently, at least in  
6 my -- my judgment in trying to look around, that  
7 the programs were kept intact.

8 Q. One of the reasons for not doing  
9 in-house biological research is, you didn't want  
10 to have anything in your files that would show  
11 that you knew specifically that cigarette smoking  
12 was harmful to health; correct?

13 MR. WALLACE: Objection, assumes  
14 facts not in evidence, it's argumentative -- wait  
15 until I finish my objection. You can answer,  
16 Byron.

17 A. To the best of my knowledge, I  
18 don't know that that's true at all.

19 Q. You're aware that American  
20 continued to support the CTR; correct?

21 A. Yes.

22 Q. And that's Council for Tobacco  
23 Research?

24 A. That's what I know it as.

25 Q. American continued to support that  
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1 program, even though they felt that that program  
2 violated public statements made in the Frank  
3 Statement in 1954; correct?

4 MR. WALLACE: Objection.

5 A. Even though it violated the --

6 Q. Yes.

7 A. I believe that might be true.

8 MR. O'FALLON: What I would like  
9 to do is have marked as the next exhibit a  
10 document Bates stamp numbered ATX 090027291  
11 through 294.

12 (Plaintiffs' Exhibit 1136 was  
13 marked for identification.)

14 MR. O'FALLON: The copies I'm  
15 going to give are not copies of that document,  
16 they are copies of the Philip Morris document. I  
17 believe they are substantially similiar.

18 Q. What's the Exhibit number of that  
19 document?

20 A. 1136.

21 Q. Plaintiffs' Exhibit 1136 is a  
22 document that's dated December 6th of 1977;  
23 correct?

24 A. Yes.

25 Q. It's from Robert K. Heimann, the  
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1 Chairman and Chief Executive Officer of American  
2 Brands, Inc., correct?

3 A. Correct.

4 Q. And it's to Mr. Addison Y. Yeaman,  
5 Chairman and President of the Council for Tobacco  
6 Research?

7 A. That's right.

8 Q. Dr. Heimann states as follows in  
9 the first page of the first paragraph:

10 "Following our discussions of  
11 December 5, I should like to summarize our  
12 company's position with respect to the Council for  
13 Tobacco Research. For many years after the TIRC  
14 was established in 1954, we were able to say  
15 that," quote, "all grants are made upon  
16 recommendation of an advisory board of independent  
17 doctors, scientists and educators. Recipients of  
18 grants are assured complete scientific freedom in  
19 conducting their investigation"; correct?

20 A. Yes.

21 Q. That's what he states; right?

22 A. That's what he states.

23 Q. He then goes on to say, "Indeed,  
24 this point was made a part of our pledge to the  
25 public in full-page advertisements headlined "A

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1 Frank Statement to Cigarette Smokers and Nine  
2 Important Facts about Smoking and Your Health";  
3 correct?

4 A. That's what it says.

5 Q. He says, "The latter ad  
6 specifically said," quote, "a scientific advisory  
7 board of outstanding scientists, doctors and  
8 educators has complete and free rein in directing  
9 the research program and awarding the money for  
10 grants"; correct?

11 A. Yes, that's what it says.

12 Q. He then goes on to say, "This, we  
13 can no longer say, since what is called," quote,  
14 "directed," end quote, "or contract," end quote,  
15 "research has been brought into the picture";  
16 correct?

17 A. That's what it says.

18 Q. "As I remarked" -- he further goes  
19 on to state, quote, "As I remarked at the  
20 September, 1976 meeting, the original concept of  
21 TIRC did not embrace the idea of contract  
22 research, but envisioned industry support of  
23 research on a pro bono publico, arm's-length  
24 basis"; correct?

25 A. Yes, sir, that's what it said.

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1 Q. It says, "I believe the current  
2 movement towards contract research is a violation  
3 of our advertised pledges to the public, and I  
4 also believe industry support of objective and  
5 independent scientific research is of cardinal  
6 importance in maintaining a statesmanlike stance";  
7 correct?

8 A. Yes, sir, that's what it says.

9 Q. He goes on to state, quote, "I do  
10 not think it would be an exaggeration to say that  
11 the current shift to contract research bastardizes  
12 the fine concept of objectivity, which many good  
13 people in the past years worked long and hard to  
14 establish"; correct?

15 A. That's what it said.

16 Q. Did American ever tell the public  
17 that they believed the research carried out by CTR  
18 under contract violated their public pledges?

19 A. Don't know whether we did or  
20 whether we didn't.

21 Q. You have no evidence that, in fact,  
22 American Tobacco went public and said that "CTR's  
23 research program violates our own public pledge";  
24 correct?

25 MR. WALLACE: Asked and answered.

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1           A.       Yes, I don't know whether I could  
2 or whether I couldn't -- whether we did or whether  
3 we didn't, rather, and what I get from this is  
4 that Mr. Heimann is standing up for the  
5 traditional position of the CTR and the position  
6 of the company, American Tobacco.

7           Q.       Did Mr. Heimann ever tell the  
8 public that he believed that CTR's current  
9 approach bastardized the fine concept of  
10 objectivity?

11          A.       I don't know.

12          Q.       Do you think he had a duty to at  
13 some point?

14                   MR. WALLACE: Objection, to the  
15 extent it calls for a legal conclusion.

16          A.       I don't know whether they had a  
17 duty or not.

18                   Certainly, the people running this  
19 program would have some disagreements from time to  
20 time, and I take that as a disagreement.

21          Q.       Certainly if Mr. Heimann had went  
22 public with these sentiments, it would severely  
23 undercut the industry's research effort at CTR;  
24 correct?

25                   MR. WALLACE: Objection. The  
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1 question is argumentative, calls for legal  
2 conclusions, speculative.

3 I think you should save your  
4 arguments, perhaps, for the jury, Mr. O'Fallon.

5 MR. O'FALLON: And I think you  
6 should make appropriate objections.

7 MR. WALLACE: Go ahead, Mr. Price.  
8 You can answer, if you can.

9 MR. O'FALLON: You know, you can  
10 make the objection without throwing in the  
11 gratuity at the end. Okay. I wouldn't object --  
12 you can state your objection. I really object to  
13 the gratuity at the end. We don't need it.

14 MR. WALLACE: You can answer.

15 MR. O'FALLON: Go back and reread  
16 the question.

17 (Record read.)

18 A. I don't know that it would.

19 Q. It would have severely undercut the  
20 credibility the public would place in CTR;  
21 correct?

22 MR. WALLACE: Objection, calls for  
23 speculation and it's argumentative.

24 A. I don't know how -- how to judge  
25 what the -- the public would believe about that.

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1 Q. Well, don't you think if the public  
2 knew that your own research program funded through  
3 the Council for Tobacco Research was being  
4 internally criticized --

5 THE COURT REPORTER: I'm sorry,  
6 would you repeat that?

7 Q. Don't you agree that if the public  
8 knew that your own internally -- internal  
9 documents indicated that the funding companies  
10 believed that CTR's research had been severely  
11 compromised and violated the industry's pledges  
12 about that, that it would have undermined the  
13 credibility of CTR in the eyes of the public?

14 MR. WALLACE: Objection. The  
15 question is incredibly vague and ambiguous, it's  
16 compound, it calls for speculation, it calls for a  
17 legal conclusion, and it entirely misrepresents  
18 the letter that's been entered as Plaintiffs'  
19 Exhibit 1136.

20 MR. O'FALLON: You can answer.

21 THE WITNESS: Try it again. I'm  
22 lost.

23 MR. WALLACE: You just give me the  
24 "same objection," please, Mr. O'Fallon, so I don't  
25 need to place it and you can ask the question and

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1 get the answer.

2 MR. O'FALLON: That would be fine.

3 MR. WALLACE: Thank you.

4 MR. O'FALLON: I'm actually going  
5 to restate it to make it a little clearer.

6 Q. Don't you agree if the public knew  
7 that American Tobacco believed CTR's research  
8 program now violated basic promises the industry  
9 made to the public, that that would severely  
10 undercut the credibility of CTR's research program  
11 in the mind of the public?

12 MR. WALLACE: Same objection.

13 A. Well, I'd -- again, I don't know --  
14 I just don't know what the public perception would  
15 be to a statement to that effect.

16 My own reaction would be that  
17 somebody taking a stance and looking at  
18 credibility of the work is good.

19 Q. Well, don't you agree that if the  
20 public knew that American thought that CTR had  
21 been -- had went wildly far from its original  
22 functions, that if the public knew -- well, strike  
23 that.

24 If the public thought CTR research  
25 was basically a front for the industry,

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1 Dr. Heimann's statement certainly would have  
2 confirmed that; correct?

3 MR. WALLACE: Objection as to form,  
4 argumentative, and mischaracterizes what's been  
5 marked as Plaintiffs' Exhibit 1136 and calls for  
6 speculation.

7 A. I don't know that Dr. Heimann's  
8 statement would really say that at all.

9 Q. And if the public had some trust in  
10 CTR, that trust would certainly be called into  
11 question by Dr. Heimann's statements; correct?

12 MR. WALLACE: Objection, calls for  
13 speculation.

14 A. Well, again, I don't know how the  
15 perceived trust goes with the public. You're  
16 asking me to make a judgment that I can't make.

17 Q. In any event, American did continue  
18 its funding of CTR; correct?

19 A. Yes, it did.

20 MR. WALLACE: Mr. O'Fallon, are you  
21 finished with that document?

22 MR. O'FALLON: Yes.

23 MR. WALLACE: I just need to go off  
24 the record for about two minutes.

25 MR. O'FALLON: Sure.

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1 MR. WALLACE: Thank you very much.  
2 I will be right back.

3 (Recess taken.)

4 (Plaintiffs' Exhibit 1137 was  
5 marked for identification.)

6 Q. Mr. Price, I have had marked as  
7 Plaintiffs' Exhibit 1137 a document Bates stamp  
8 numbered 680212421 through 423.

9 Have you seen this document  
10 previously?

11 MR. WALLACE: Take your time. Take  
12 a look at it, Byron.

13 A. Yes, I have seen this one. It was  
14 a pre -- what do you call it, a pre --

15 Q. Predesignation.

16 A. Predesignation.

17 Q. This document would follow in time  
18 the document dated December 6th, 1977, the  
19 document -- the letter by Dr. Heimann to  
20 Dr. Yeaman; correct?

21 A. Yes, I believe it does.

22 Q. This one's dated April 4th of 1978;  
23 correct?

24 A. '78, and the other one was '77?

25 Q. Correct.

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1 A. Well, it would follow after, it  
2 came later, yes.

3 Q. The first paragraph of this says  
4 that, quote, "American Brands has at last agreed  
5 to go along with the level of funding which the  
6 CTR requested of the companies and which B&W  
7 tentatively agreed to in December"; correct?

8 A. Yes, it said that.

9 Q. It says, "American, RJR and PM  
10 continue to harbor doubts concerning the operation  
11 and direction of CTR"; correct?

12 A. Yes.

13 Q. "I think American will not vote for  
14 the budget, but will agree to pay their share of  
15 the full funding"; correct?

16 A. Yes, I believe that's what it says.

17 Q. So, in other words, even though  
18 American Tobacco believed that CTR research was at  
19 this point misguided, they, nonetheless, went  
20 along with their colleagues in the industry;  
21 correct?

22 MR. WALLACE: Objection. It's an  
23 argumentative question, and it also again  
24 mischaracterizes what's been marked as Plaintiffs'  
25 Exhibit number 1136.

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1           A.       Well, it says, "American, RJR and  
2 PM continue to harbor doubts concerning  
3 operations."

4                    They can certainly have  
5 agreements -- internal agreements about how things  
6 were run.

7                    What was the rest of your question?

8           Q.       I said, despite those doubts, they,  
9 nonetheless went along with their industry  
10 colleagues and agreed to fund CTR; correct?

11                   MR. WALLACE:  Objection, that was  
12 not the question that you asked him which he asked  
13 you to repeat.

14                   MR. O'FALLON:  Well, if he wants it  
15 read back --

16                   MR. WALLACE:  That question was --

17                   MR. O'FALLON:  -- I will  
18 specifically have it read back.

19                   (Record read.)

20                   MR. WALLACE:  Same objection,  
21 asked and answered.

22           A.       I don't believe it says  
23 "misguided," it might mischaracterize this.

24           Q.       Well, do you believe that's the  
25 general gist of Mr. Heimann's remarks that you saw

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1 previously?

2 MR. WALLACE: Objection.  
3 Plaintiffs' Exhibit number 1136 speaks for  
4 itself.

5 A. It think it said they had doubts --  
6 harbored doubts.

7 Q. They said it violated your previous  
8 promises to the public; correct?

9 MR. WALLACE: He is referring back  
10 to this exhibit now.

11 A. Oh, that?

12 MR. WALLACE: 1136.

13 THE WITNESS: Yes, he said it  
14 violated that, yes, I agree with that.

15 Q. So, despite the fact that American  
16 Tobacco believed CTR's research now violated the  
17 public pledge that American Tobacco and its  
18 colleagues in the industry made, it still went  
19 along and paid for the research; correct?

20 MR. WALLACE: Objection. The  
21 question again totally mischaracterizes record  
22 evidence Plaintiffs' Exhibit 1136.

23 You can answer.

24 A. Well, he certainly objected in this  
25 first portion, the first memorandum to it, but to

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1     come back and have a document from -- I guess this  
2     is B&W, characterizing the work as misguided, I  
3     don't think that's exactly correct.

4                     MR. O'FALLON: Move to strike.  
5     Why don't we repeat the question? I think you've  
6     lost it.

7                     MR. WALLACE: I think it's been  
8     asked and answered, and I think its unfair,  
9     Mr. O'Fallon, to take this letter out of context  
10    in which Mr. Heimann clearly was talking about one  
11    aspect of CTR research which gave him concern, and  
12    then to frame a question in terms of a blanket  
13    statement about him having concerns, everything  
14    CTR was doing, I think that improper  
15    mischaracterization and misuse of the record.

16                    MR. O'FALLON: Save it for the  
17    Court. Save your argument for the Court, sir.

18                    MR. WALLACE: You can answer.

19                    MR. O'FALLON: That's why we have  
20    said, "no speaking objections."

21                    You just really don't understand  
22    that part of the order, do you, but I guess that  
23    shouldn't surprise me.

24                    Why don't we read the question back  
25    and see if we can't get an answer to it?

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1 Do you want a standing objection?  
2 MR. WALLACE: No, I don't. I've  
3 objected, and I will object again. The question  
4 has been asked and answered, and I will object  
5 each time you ask it.

6 MR. O'FALLON: Going to make more  
7 speeches, too, because I so enjoy hearing them.  
8 Can you read it back, please?  
9 (Record read.)

10 MR. WALLACE: Objection. The  
11 question is argumentative. It entirely  
12 mischaracterizes Mr. Price's testimony, the record  
13 evidence admitted to this point in this  
14 deposition, and it calls for speculation.

15 With that, you can answer.

16 A. Well, again, I go back to, we have  
17 one document where he's saying there's a problem  
18 with part of a program, and it states that very  
19 clearly.

20 Now it says, yes, they have  
21 contract work, but the whole program is much, much  
22 bigger than the whole, and yes, I think that it's  
23 certainly correct for him to go and support that.

24 Q. And to not tell the public that  
25 American now believed that CTR was violating

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1 American and all the other companies' public  
2 pledge made in 1954; correct?

3 MR. WALLACE: Objection. The  
4 question is argumentative. It calls for a legal  
5 conclusion. It's vague and ambiguous. It's been  
6 asked and answered a half-dozen times to this  
7 point.

8 Of course, the record isn't  
9 reflecting the fact, Mr. O'Fallon, that you  
10 continue to make hand gestures during all of this,  
11 but I would like the record to reflect that you're  
12 acting as if you're some sort of conductor here  
13 with your hands throughout this, and I think  
14 that's improper deposition behavior.

15 MR. O'FALLON: You know, I think  
16 your entire behavior has been improper and a  
17 violation of the Court's orders, but let's go on,  
18 you know. I have had to tolerate speech after  
19 speech after speech, so let's just go on and get  
20 the question answered. Let's repeat the question.  
21 If you want a standing objection, you can have a  
22 standing objection.

23 Could we have the question read  
24 back.

25 (Record read.)

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1 MR. WALLACE: Same objection.

2 A. Well, as far as -- as far as I can  
3 see, this is making a lot bigger issue out of what  
4 I consider, from looking at this, merely a dispute  
5 internally about how some grants are being done.  
6 The overall program with CTR is just so much  
7 bigger that I don't think that's violating the  
8 pledge.

9 Q. So, you and Mr. Heimann agree --  
10 disagree about that, huh?

11 A. Well, he saw it. I don't know what  
12 all he was talking about. He apparently had a  
13 particular -- particular opinion.

14 Q. Excuse me. Let's look down to the  
15 last paragraph where it talks about the Committee  
16 of Counsel.

17 A. Committee?

18 Q. Were you aware of a Committee of  
19 Counsel at CTR?

20 A. A Committee of Counsel at CTR?

21 Q. Yes.

22 A. No, sir.

23 Q. Were you aware that the Committee  
24 of Counsel would often fund what were called  
25 "special projects"?

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1 MR. WALLACE: Objection, assumes  
2 facts not in evidence.

3 MR. O'FALLON: They'll be in  
4 evidence.

5 A. No, sir.

6 Q. Were you aware that special  
7 projects were funded through CTR for the defense  
8 of the industry against smoking and health  
9 litigation?

10 MR. WALLACE: Objection, assumes  
11 facts not in evidence. It's also vague and  
12 ambiguous.

13 A. I'm not aware of any special  
14 projects.

15 Q. You would agree that that would  
16 also be a violation of the industry's pledge to do  
17 objective research through TIRC and its successor,  
18 CTR; correct?

19 MR. WALLACE: Objection as to form  
20 and to the extent it calls for a legal  
21 conclusion.

22 THE WITNESS: Say it again, not  
23 real quick.

24 MR. O'FALLON: Sure. Why don't we  
25 read it back.

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1 (Record read.)

2 A. It would not be -- it might be  
3 considered nonobjective.

4 Q. Might be considered a violation of  
5 the industry's 1954 pledge to do objective  
6 research; correct?

7 MR. WALLACE: Objection, calls for  
8 a legal conclusion, also requires speculation.

9 A. At this stage, I don't know whether  
10 I do or don't.

11 Q. I would now like to turn to the  
12 whole issue of the control of nicotine and other  
13 reinforcing substances in cigarettes and design  
14 and manufacturer of cigarettes Re the same.

15 From approximately 1963 to 1974,  
16 American Tobacco looked at the issue of whether it  
17 should add nicotine to its sheet; correct?

18 A. There was activity to that effect  
19 during that time frame.

20 Q. During that time frame -- at least  
21 during part of that time frame, you did not refer  
22 to nicotine directly, but called it Compound W;  
23 correct?

24 A. There was a Compound W.

25 Q. And Compound W was a nicotine;

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1 right?

2 A. Yes, uh-huh.

3 Q. It could also be a salt of  
4 nicotine; correct?

5 A. Yes, it was.

6 Q. Nicotine citrate or nicotine  
7 malate?

8 A. Those were the two that were  
9 involved.

10 Q. And was nicotine citrate or  
11 nicotine malate added to cigarettes by American  
12 Tobacco?

13 A. Nicotine -- with the exception of  
14 nicotine malate -- or I should -- let me rephrase  
15 that.

16 Nicotine malate was added to a test  
17 market product in 19 and 69ish. It was added at a  
18 level, I believe, of a hundred times lower than  
19 the nicotine in the tobacco blend and was added as  
20 a flavorant.

21 Q. Was that ever added -- was any form  
22 of nicotine ever added as a -- as an ingredient of  
23 a commercially sold product?

24 A. Other than that, the situation I  
25 just described where it was on test market for

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1 three months, failed miserably; no.

2 Q. Okay. What was the name of that  
3 product?

4 A. It was a Lucky Strike product.

5 Q. So, for three months, Lucky Strikes  
6 in certain test markets had nicotine added to  
7 them?

8 A. They had a low level of flavorant  
9 added -- hundred times lower than the level of  
10 nicotine in the blend; yes.

11 Q. And that was 1969, did you say?  
12 MR. WALLACE: Asked and answered.

13 A. Yes, I believe it was.

14 Q. What were the test markets?

15 A. I think it was test market, and it  
16 was in Washington State.

17 Q. Was there any other point in time  
18 in which nicotine was added to a commercial  
19 product, and I'm going to include, added into the  
20 extract used to make reconstituted tobacco?

21 A. That's a compound question.  
22 Objection, that's a compound question.

23 Q. Was nicotine ever added to the  
24 extract before it was sprayed on to your  
25 reconstituted tobacco?

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1 A. We had some experimental work.  
2 Q. Was it ever added to a commercial  
3 product?  
4 A. I don't believe so. I think I  
5 described the only thing that I know of was added  
6 to a commercial product.  
7 Q. After 1969, you continued, however,  
8 to look at the addition of nicotine to your  
9 cigarettes; correct?  
10 A. There were some efforts to look at  
11 that, yes.  
12 Q. Let's just look at some of the  
13 documents that relate to that.  
14 MR. O'FALLON: I would like to have  
15 marked as the next exhibit a document Bates  
16 stamped MNAT 00316688 through 6693.  
17 (Plaintiffs' Exhibit 1138 was  
18 marked for identification.)  
19 Q. What's the exhibit number?  
20 A. 1138.  
21 Q. Exhibit 1138 is a document dated  
22 October 8th of 1963; correct?  
23 A. That's correct.  
24 Q. This is an internal American  
25 Tobacco document; correct?

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1           A.       I believe it is.  
2           Q.       And the title of the document is  
3 "The Effect of the Addition of 1 Percent Nicotine  
4 on the Quality of RC Tobacco"; correct?  
5           A.       Yes.  
6           Q.       And what's "RC" mean?  
7           A.       "RC" stands for reconstituted  
8 tobacco.  
9           Q.       And when did American start to  
10 produce reconstituted tobacco?  
11          A.       Either late '63 or I guess maybe  
12 early '64. I'm not exactly sure.  
13          Q.       How many brands of American  
14 included reconstituted sheet, roughly?  
15          A.       I need maybe a time frame.  
16          Q.       Well, let's start from 1964  
17 forward.  
18                   How about for 1964 to 197 --  
19          A.       Well, it started in '64, it would  
20 have been a smaller number.  
21          Q.       Okay.  
22          A.       Later on, all brands -- or nearly  
23 all brands.  
24          Q.       Okay. At what point in time did  
25 nearly all brands have reconstituted sheet added?  
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1 A. Probably within a year or two or  
2 three.

3 Q. Okay. So, by 1966, is it safe to  
4 say that nearly all brands produced by American  
5 Tobacco had some level of reconstituted tobacco in  
6 it?

7 THE COURT REPORTER: I'm sorry,  
8 that --

9 MR. O'FALLON: American Tobacco had  
10 reconstituted sheet added?

11 MR. WALLACE: "Some level of  
12 reconstituted sheet," is what you had originally.

13 A. Well, let me answer that this way:  
14 Let's make that, certainly by in the early '70s.

15 Q. Okay. So, by the early '70s, all  
16 of American Tobacco's brands had some level of  
17 reconstituted sheet added?

18 A. I believe so.

19 Q. And did you have varying types of  
20 reconstituted sheet?

21 A. Yes, we did.

22 Q. For instance, I have seen reference  
23 to RC-A. What does that mean?

24 A. RD-A was one of the earlier types  
25 of recon -- Ed Hamner.

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1 Q. And what did "A" mean?  
2 A. I don't know.  
3 Q. Would that refer to "ammoniated"?  
4 A. No.  
5 Q. You did ammoniate some of your  
6 tobacco, correct, your reconstituted sheet?  
7 MR. WALLACE: Objection, vague and  
8 ambiguous.  
9 A. If you're referring to the addition  
10 of diammonium, we did do that later on.  
11 Q. Well, you also added monammonium  
12 phosphate; correct?  
13 A. I believe there may have been some  
14 tests with it, but not commercial.  
15 Q. When did you first add diammonium  
16 phosphate to your reconstituted sheet?  
17 A. Maybe in 1960 -- somewhere in '68  
18 or '69.  
19 Q. Going back to document Plaintiffs'  
20 Exhibit 1138, this would indicate that you added 1  
21 percent nicotine in the form of nicotine citrate  
22 to reconstituted tobacco during manufacture at the  
23 Schweitzer's Spotswood plant on July --  
24 THE COURT REPORTER: I'm sorry.  
25 Would you repeat that?

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1 Q. You would agree that the document  
2 states that approximately 1 percent nicotine in  
3 the form of nicotine citrate was added to  
4 R.C. Tobacco during manufacture at Schweitzer's  
5 Spotswood plant on July 3rd, 1963?

6 A. That's what it says, yes.

7 Q. And this was thereafter identified  
8 as RC X-300?

9 A. Yes.

10 Q. At the bottom, there's a paragraph  
11 involving manufacture of RC with added nicotine;  
12 correct?

13 A. Yes, sir.

14 Q. It says, "According to  
15 calculations, the 93 pounds of nicotine  
16 concentrate was sufficient to increase the  
17 nicotine content of between 2,900 and 3,000 pounds  
18 of RC by 1 percent"; correct?

19 A. Yes, that's what it reads.

20 Q. So, the nicotine was added to  
21 actually increase the nicotine content of the  
22 reconstituted sheet; correct?

23 A. It was added to the reconstituted  
24 sheet to bring it back to what was being lost  
25 through the manufacturing process.

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1 Q. Where does it say that, sir?

2 A. It doesn't. I know that's what was  
3 happening.

4 Q. Well, that's not what this document  
5 says, is it, sir?

6 MR. WALLACE: Well, he is entitled  
7 to put the document in context.

8 MR. O'FALLON: And I'm entitled to  
9 ask a question about it.

10 Q. That's not what the document says,  
11 is it, sir?

12 A. It will raise what is there by 1  
13 percent, and that 1 percent, then, should bring it  
14 back into line.

15 MR. O'FALLON: Move to strike the  
16 last part.

17 Q. When you manufactured Lucky Strike  
18 in 1969 with added nicotine, did you add enough  
19 nicotine to the reconstituted sheet to raise the  
20 nicotine content of that nicotine sheet by 1  
21 percent?

22 A. Nope.

23 Q. What did you raise it by?

24 A. About a hundred percent.

25 Q. And do we have a document that

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1 shows that someplace?

2 A. I don't know.

3 Q. What's the basis for your  
4 knowledge?

5 A. Past work I've done. Let's see.  
6 Where was that?

7 Ah, that was in the submissions we  
8 did to the Waxman Committee.

9 Q. And is there any internal document  
10 that would substantiate that statement, if I were  
11 to go look for it?

12 MR. WALLACE: Objection.

13 A. I don't know what's -- I don't know  
14 what documents are there right now.

15 Q. You haven't had a chance to look  
16 back at those documents to see if those documents  
17 have been produced?

18 A. Don't know.

19 MR. WALLACE: Objection. He just  
20 told you the documents were produced in response  
21 to the Waxman request.

22 MR. O'FALLON: I asked whether they  
23 were produced in response to us. Maybe I should  
24 myself clearer.

25 Q. Do you think those documents -- did  
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1 you produce documents to the Waxman Committee that  
2 showed that you increased the nicotine by one  
3 hundredth of a percent?

4 A. That was in an answer to one of the  
5 requests.

6 Q. So, it wasn't in a document, it was  
7 just in an answer written by your lawyer?

8 A. I don't know that. I think we may  
9 have some other documents, too. I don't know  
10 that.

11 MR. WALLACE: Object.

12 Q. What you recall from is an answer  
13 written by your lawyers?

14 MR. WALLACE: I object to your --

15 A. No, it wasn't written --

16 MR. WALLACE: Hold on, Byron. When  
17 I start stating an objection, stop, okay, and I  
18 object to that question as improper and assuming  
19 facts not in evidence.

20 If you want to ask him who wrote  
21 the submission to the Waxman production, that's an  
22 entirely different matter.

23 MR. O'FALLON: You know what, if  
24 you want to conduct this deposition, you can  
25 notice it yourself.

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1           A.       The responses to the Waxman  
2 Committee were all done by people at research and  
3 development.

4           Q.       And it's your testimony there was  
5 no input by lawyers in making those responses?

6           A.       To the best of my knowledge, those  
7 responses, once they left R&D, remained the same.

8           Q.       That's not my question. My  
9 question is: Did lawyers have input into those  
10 responses?

11                   MR. WALLACE: Objection. The  
12 question has been asked and answered.

13                   MR. O'FALLON: I'll agree, it's  
14 been asked.

15           A.       I don't know that there was input  
16 or there wasn't.

17           Q.       Were you part of the people that  
18 drafted those responses?

19           A.       Yes, I was, but not that  
20 specific --

21           Q.       Did you consult --

22                   MR. WALLACE: You have to let him  
23 finish his answers, Mr. O'Fallon.

24           Q.       Did you consult with lawyers in  
25 doing the work that you did?

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1 A. No, sir.

2 MR. WALLACE: Did you finish the  
3 answer to the previous question that he asked  
4 you?

5 THE WITNESS: I'm not sure.

6 MR. WALLACE: He asked you, were  
7 you part of the people that drafted the responses,  
8 and you said "Yes, I was, but not that specific,"  
9 and he cut you off.

10 A. Not the specific one that he was  
11 asking me, some questions back prior there.

12 MR. O'FALLON: Got any more  
13 questions you would like to ask, Mr. Wallace,  
14 because as far as I'm concerned, that's coming out  
15 of your part of the questioning, so if you want to  
16 ask some more, you go ahead.

17 MR. O'FALLON: I'll next have the  
18 Court Reporter mark a document Bates stamped  
19 MNAT 00316683 through 84.

20 MR. O'FALLON: Let's take a break.

21 (Plaintiffs' Exhibit 1139 was  
22 marked for identification.)

23 (Recess taken.)

24 Q. Mr. Price, while we were off the  
25 record, I had marked as Plaintiffs' Exhibit 1139 a  
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1 document Bates stamped MNAT 00316683 through  
2 6884.

3 Have you seen this document  
4 previously?

5 A. Yes, on the precertified.

6 Q. Okay. And this again discusses  
7 nicotine fortification of reconstituted tobacco;  
8 correct?

9 A. That's what it did, yes.

10 Q. Particularly, it appears that the  
11 nicotine content of RC and RC-A was altered?

12 A. One was fortified to bring it up to  
13 a 1.2 level, approximately. That's what it says.

14 Q. And what was its normal level?

15 A. Well, incoming materials would  
16 probably be running at about 1.2, so that's  
17 about -- probably about what was lost in  
18 manufacturing.

19 Q. Just so we're clear, it says, "In  
20 the pilot plant run, it was desired to increase  
21 the nicotine content of the RC by about point --  
22 by 0.4 percent or to at least 1.2 percent  
23 nicotine"; correct?

24 A. Okay.

25 Q. So, you're apparently increasing it  
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1 from .8 to 1.2?

2 A. Well, only going the actual  
3 analysis showing .94 to 1.27 -- oh, up here --  
4 you're talking about there?

5 Pilot -- you're looking at the  
6 second paragraph, then?

7 Q. Yes, I am.

8 A. Okay. I had jumped down to the  
9 other analysis.

10 So, .4 to about at least about 1.2;  
11 yes, that's what it says.

12 Q. So, that would be about a 50  
13 percent increase; correct?

14 A. Well, it's 4 percent -- four-tenths  
15 of a percent absolute increase, relatively -- no,  
16 it's not 50 percent on relative.

17 Q. If you go from .8 to 1.2 percent,  
18 isn't that a 50 percent increase?

19 A. Well, certainly half of that is  
20 but -- it's a little higher. If you look down  
21 below, it's .94, so it isn't quite that much.

22 Q. Yeah, it goes -- in actuality, it  
23 went from .94 to 1.27; correct?

24 A. Uh-huh, sure.

25 Q. So, that's about what, about a 30

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1 to 40 percent increase in nicotine?

2 A. Maybe something like that.

3 Q. In the third paragraph, it states,  
4 quote, "The regular amount of salt additives was  
5 used in both the control and the  
6 nicotine-fortified products."

7 What were those salt additives or  
8 additive?

9 A. Nicotine malate.

10 Q. Well, I don't think so, and that's  
11 why I'm asking the question, but let's read the  
12 whole document and I'll tell you why I'm confused.  
13 It says, "The regular amount of salt additive was  
14 used in both the control and nicotine-fortified  
15 products. Nicotine was also added by size press  
16 application in the form of nicotine malate."

17 So, as I read that, you're adding a  
18 certain amount of salts to both the control and  
19 the nicotine-fortified product and then adding  
20 nicotine on top of that; is that incorrect?

21 MR. WALLACE: Why don't you take  
22 the time to look at the document and try to see if  
23 you can help Mr. O'Fallon here put it in context.

24 A. Uh-huh. Well, the product RC-A  
25 carried no added salt, so if that's the control,

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1 it is stated confusingly here.

2 Q. Well, what is the regular amount of  
3 salt nicotine that was used in both the control  
4 and the nicotine-fortified product? What is  
5 that? What is -- what are they talking about when  
6 they say "the regular amount of salt additive"?

7 A. I don't know. The business about  
8 where it was added makes sense.  
9 Nicotine-fortified product going at size press,  
10 that makes sense. The regular amount of salt  
11 additive in both control and nicotine, that  
12 doesn't make sense.

13 Q. Well, it appears that there's some  
14 form of salt that you add to all of your RC, and  
15 I'm just trying to figure out what that is.

16 A. I don't think so.

17 Q. You don't think that's what that  
18 states?

19 A. Nope.

20 MR. O'FALLON: I'm next going to  
21 have marked a document Bates stamp numbered  
22 621400407 through 412.

23 (Plaintiffs' Exhibit 1140 was  
24 marked for identification.)

25 Q. By the way, just to go back to  
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1 1139, that was a document generated in the  
2 ordinary course of business; correct --

3 A. Yes.

4 Q. -- and maintained in the ordinary  
5 course of business by American Tobacco?

6 A. Yes.

7 Q. I have handed you a document that's  
8 been marked as Plaintiffs' Exhibit 1140. It's  
9 dated April 10th, 1968. It's a memo from E.S.  
10 Harlow to J.B. McCarthy attaching another memo, a  
11 summary report.

12 Have you seen this previously?

13 A. I don't think so.

14 Q. On the second page of this  
15 document, which is dated April 9th of 1968,  
16 there's a discussion of "Project K."

17 Do you recall a "Project K"?

18 A. Project K was perceived to use some  
19 sort of synthetic base sheet.

20 Q. It says that, in the third  
21 sentence, "As a target for the K base sheet, we  
22 are using a base sheet fabricated from tobacco  
23 leaf"; correct?

24 A. Yes, it does.

25 Q. And it says, "The guideline for the  
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1 formulation for additives for this sheet includes  
2 the classes of compounds known to exist in  
3 tobacco"; correct?

4 A. Yes.

5 Q. Do you know where those additives  
6 were being obtained from?

7 A. No, sure don't.

8 Q. Would that include nicotine?

9 A. Might.

10 Q. Was the synthetic --

11 A. But it might not, too. I don't  
12 know.

13 Q. Was this K base sheet or this  
14 synthetic base sheet ever used in commercial  
15 products?

16 A. No.

17 Q. Under project K, it also says,  
18 "Presently, the base sheet will comprise 40  
19 percent and additives, 60 percent of the final  
20 total weight of the product."

21 Do you know how those additives  
22 were added back in?

23 MR. WALLACE: Objection, vague and  
24 ambiguous.

25 A. How -- how they were added back  
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1 in? I don't -- part of the -- part of the --  
2 BY MR. O'FALLON:

3 Q. When you're adding something, I  
4 assume it's an additive not naturally occurring,  
5 but --

6 A. I'm trying to -- trying to recall  
7 on this project K. It seems to me it had  
8 something to do with a sheet other than actual  
9 tobacco. It may have been a cellulose type base.  
10 That's about all I can recall of it. How it was  
11 added, I don't know -- sprayed on or something.

12 Q. You're not sure of the process that  
13 was used there?

14 A. No.

15 Q. But as far as you know, it wasn't  
16 used in a commercial product?

17 A. That's correct.

18 Q. Let's look on page 3, last four  
19 Bates numbers 0410. See that, where it says,  
20 "nicotine content of our products"?

21 A. Uh-huh.

22 Q. It says, "As previously discussed,  
23 increasing the proportion of RC and Turkish in our  
24 various blends due to improvement in RC results in  
25 a blend of lower nicotine content"; correct?

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1 A. Yes.

2 Q. It says, "This could adversely  
3 affect the smoker's enjoyment and satisfaction";  
4 correct?

5 A. That's what it says.

6 Q. So, apparently nicotine is linked  
7 to the smoker's enjoyment and satisfaction?

8 A. Potentially, but when the recon is  
9 changed, a whole lot of other things get changed,  
10 too, so it may have something to do with it --  
11 more than likely, it's the whole ball of wax.

12 Q. Down a few sentences, they talk  
13 about a second approach would be that of adding  
14 nicotine to the reconstituted sheet.

15 A. Where are you looking at?

16 Q. I'm still under the "nicotine  
17 content of our products"?

18 A. The second approach would be --  
19 okay.

20 Q. Do you see that?

21 A. I got it.

22 Q. So, there are two methods by which  
23 this could be accomplished; one would be the  
24 addition of the nicotine salt, such as nicotine  
25 malate and the other would be that of adding

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1 rustica, which is extremely high in its nicotine  
2 content, and then it goes on to state, "As you are  
3 aware, we are planning a small amount of rustica  
4 on the land adjacent to the laboratory and  
5 contemplate growing small plots in Connecticut and  
6 Pennsylvania."

7 A. Okay.

8 Q. Was rustica ever grown?

9 A. It was grown one summer.

10 Q. Was it added to your tobacco?

11 A. Other than a research test, I'm not  
12 aware of any.

13 Q. You're not aware that it was ever  
14 added to a commercial product?

15 A. No, never was.

16 Q. And it was only grown the one year?

17 A. That's all I remember, it was  
18 pretty -- it was a pretty poor-looking crop of  
19 tobacco.

20 Q. Was it ever commercially purchased,  
21 rustica?

22 A. It may have been, but it would have  
23 been pretty hard. We probably planted it because  
24 it was hard to get ahold of. I don't know that.

25 Q. Is rustica a form of tobacco?

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1           A.       That is a Native American Tobacco  
2 as Indians might have used. There are two types  
3 of tobacco, nicotinia tobaccum, which is current  
4 commercial tobacco as we know it, and the other is  
5 nicotinia rustica.

6           Q.       And nicotinia rustica is not  
7 typically used in cigarettes?

8           A.       No.

9           Q.       Let's look on page 411 under  
10 "RC-A."

11          A.       Uh-huh.

12          Q.       This talks about in the first  
13 extended run, it became apparent that the sheet  
14 was soaking up a much greater quantity of the  
15 extract and was thus becoming tack -- becoming  
16 somewhat tacky?

17          A.       Yes.

18          Q.       How is the extract added to the  
19 reconstituted sheet?

20          A.       The extract is readded with a  
21 device that's called a size press.

22          Q.       What happens in that process?

23          A.       The concentrated extract is flowed  
24 into -- into a V -- if this is two rollers --  
25 (Demonstrating)

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1 Q. Uh-huh.

2 A. It's put into here and the sheet  
3 comes up through it and it gets pressed right back  
4 into the sheet, so that what was there has been  
5 put back in.

6 Q. If I understand the process to make  
7 reconstituted sheet, the first thing you do is  
8 basically extract out many of the materials  
9 through some kind of a water or steam process; is  
10 that right?

11 A. That's correct. We extract -- the  
12 tobacco is extracted -- or I guess I should say  
13 was -- was extracted and then you get not all of  
14 it, but most of it away from the fiber. The fiber  
15 is ground, so it would be similar to making paper  
16 and lay it on the web, then the extract that had  
17 extra water to it is now diluter than it was when  
18 it was on tobacco, so that's concentrated to put  
19 it back into the same solid configuration that it  
20 was in tobacco and then put it back in a size  
21 press.

22 Q. Are other additives added to that  
23 extract prior to reintroducing it with the  
24 reconstituted sheet?

25 A. They can be.

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1 Q. Over time, what other things were  
2 added to the extract?

3 A. Diammonium phosphate, and you can  
4 add the -- well, the so-called casing materials --  
5 licorice, chocolate, humectant, invert syrup.

6 Q. So, from a technical sense, what  
7 goes back on to the reconstituted sheet is  
8 different than what came out of the reconstituted  
9 sheet; correct?

10 A. It's a little more dilute.

11 Q. Well, you've also got diammonium  
12 phosphate, which wasn't naturally in that sheet in  
13 the same quantity; correct?

14 A. Providing it's the grade that uses  
15 diammonium phosphate.

16 THE COURT REPORTER: I'm sorry.

17 A. Providing it's the grade that uses  
18 diammonium phosphate, yes.

19 MR. O'FALLON: I'm going to have  
20 marked as Plaintiffs' Exhibit 1141 a document  
21 Bates stamp numbered MNAT 00533224.

22 (Plaintiffs' Exhibit 1141 was  
23 marked for identification.)

24 A. 1141.

25 Q. 1141 is a single-page document

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1 dated May 14th of 1969.

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. This is from John T. Ashworth to  
5 several individuals; correct?

6 A. Right.

7 Q. Is this a document from American  
8 Tobacco's files?

9 A. Yes, it is --

10 Q. Was it --

11 A. -- looks like it.

12 Q. To the best of your knowledge, was  
13 it produced in the ordinary course of business?

14 A. Yes.

15 Q. And maintained in the ordinary  
16 course of business?

17 A. Yes.

18 Q. Would that also apply to the  
19 previous exhibit, Plaintiffs' Exhibit 1139 -- no,  
20 I'm sorry, Plaintiffs' Exhibit 1140?

21 A. Forty? Yes, I think so.

22 Q. Plaintiffs' Exhibit 1141 states,  
23 "In the future, our use of nicotine should be  
24 referred to as," quote, "Compound W," end quote,  
25 in our experimental work reports and memorandum,

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1 either for distribution within the department or  
2 for outside distribution"; correct?

3 A. That's what it reads.

4 Q. Do you know why?

5 A. No, no particular reason, other  
6 than, we commonly had project codes on anything  
7 and this was -- Compound W was probably at this  
8 stage getting close to the July -- I think it came  
9 out in July in the Lucky Strike addition that I  
10 mentioned previously, so at that stage, they would  
11 put things under just a code name, that's all.

12 Q. Okay. It then states, "In the  
13 event that nicotine is used in the form of a salt  
14 such as nicotine dimalate, it should be referred  
15 to as Compound WM, and if used as citrate salt,  
16 referred to it as Compound WS," et cetera,  
17 correct?

18 A. Yes.

19 Q. Okay. So, if we just see "Compound  
20 W," does that refer just to pure nicotine?

21 A. I don't think it's always that  
22 clean and neat, because I take it that they put  
23 that "Compound W" because the different salts were  
24 not being identified and that this is some way to  
25 try and codify that.

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1 I do believe that Compound W has  
2 been used as nicotine and was used to represent  
3 nicotine and also nicotine salts, probably  
4 interchangeable.

5 MR. O'FALLON: I'm going to have  
6 marked as Plaintiffs' Exhibit 1142 a document  
7 Bates stamp numbered NMAT 00533253.

8 (Plaintiffs' Exhibit 1142 was  
9 marked for identification.)

10 MR. WALLACE: Take your time.  
11 Take a look at it.

12 Q. Plaintiffs' Exhibit 1142 is a  
13 document dated May 29, 1969.

14 Have you seen this document  
15 previously?

16 A. I believe I did.

17 Q. This is one of the documents you  
18 had the chance to review prior to the deposition;  
19 correct?

20 A. Uh-huh.

21 Q. This is the subject "Experimental  
22 Lucky Strike Cigarette," parenthetical "RC-E"?

23 A. Uh-huh.

24 Q. Does this refer to the Lucky Strike  
25 cigarette you were talking about which was

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1 produced commercially to which nicotine was added?

2 A. Yes, it was -- or is.

3 Q. The second paragraph states that  
4 "Compound W was added to the dip casing to  
5 maintain the same level of this constituent as is  
6 now present in the regular Lucky Strike blend"?

7 A. Uh-huh, okay, maintain the same  
8 level.

9 Q. What's --

10 A. I'm trying to get my context  
11 correct here.

12 Dip casing -- maintaining the same  
13 level of the constituent now present in the  
14 regular Lucky Strike blend.

15 MR. WALLACE: Take your time to  
16 read through it. Maybe it will help you to  
17 respond to Mr. O'Fallon's question.

18 A. All right. The Compound W referred  
19 to here, the dip casing, I'm not exactly sure that  
20 level they are talking about Lucky Strike.

21 Q. It doesn't say anywhere, really,  
22 does it?

23 A. It does not tell you that, but I do  
24 know that that's not what was put out, and I may  
25 have misspoken, the Lucky Strike that I mentioned

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1       went to Washington, I know what that level was,  
2       and this is some other experiment.

3               Q.       So, this isn't the Lucky Strike you  
4       talked about, this is some other Lucky Strike?

5               A.       No, this is another test, probably  
6       right before that somewhere.

7               Q.       Okay. What's the dip casing?

8               A.       Well, dip casing is -- kind of just  
9       what it says, it's quite messy or was quite  
10       messy. I don't know that anybody has used it for  
11       years, and tobacco, Burley tobacco would come  
12       along the belt, and there's a big vat casing  
13       material, someone took it off, put it in there and  
14       picked it up, put it off to dry. (Demonstrating)

15              Q.       And that's where the nicotine was  
16       added?

17              A.       Well, that's what they said it did,  
18       yes.

19              Q.       Okay. In the fourth paragraph, it  
20       says, "Incidentally, the properties of the RC-EW  
21       cigarettes were essentially the same as obtained  
22       on RC-E. These data are not being reported since  
23       I believe it is a general consensus that Compound  
24       W should be added during cigarette blend  
25       preparation rather than during the production of

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1 the RC-EX grade when it goes into production at  
2 Hamner Division."

3 What do they mean, "added during  
4 the cigarette blend preparation"?

5 A. Blend preparation would be when the  
6 other tobaccos are blended, you can add a spray  
7 casing, as opposed to a dip, and that's probably  
8 what they are referring to.

9 Q. And is that ultimately how the  
10 Compound W was added to the commercial Lucky  
11 Strikes that were test marketed?

12 A. I want to remember they went --  
13 ended up going into the RC-EX grade, even though  
14 this says maybe something to the contrary.

15 Q. So, it was added to the extract?

16 A. I think so.

17 Q. In any event, it appears that  
18 American had several ways of adding nicotine to  
19 their cigarettes; correct?

20 MR. WALLACE: Objection. This  
21 document speaks for itself.

22 A. In addition to blending and putting  
23 this in, yeah.

24 Q. Well, several ways of adding  
25 additional nicotine as some kind of a spray;

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1 right?

2 A. Nic -- short -- nic can be added by  
3 spray or a dip case or by blend.

4 MR. O'FALLON: I would like to  
5 mark as Exhibit 1143 a document Bates stamped  
6 numbered MNAT 00533255 through 256.

7 (Plaintiffs' Exhibit 1143 was  
8 marked for identification.)

9 Q. Do you recognize 1143, Plaintiffs'  
10 Exhibit 1143?

11 A. Yes, I believe I have seen this  
12 before.

13 Q. This is a document you had the  
14 chance to review prior to today's deposition?

15 A. Uh-huh.

16 MR. WALLACE: But if you would like  
17 to take more time to review it now, please do.

18 A. Yeah, I do, because there's a lot  
19 of --

20 Q. Would you answer my question first,  
21 and then you can review the document.

22 A. Uh-huh.

23 Q. You have had the opportunity to  
24 review this document prior to today; correct?

25 A. Yes.

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1 Q. You have had the opportunity to  
2 discuss this document with your attorneys;  
3 correct?

4 A. Sure.

5 Q. Did you discuss this document with  
6 your attorneys?

7 MR. WALLACE: Object on the grounds  
8 of attorney/client privilege.

9 MR. O'FALLON: I'm just asking  
10 whether he did or didn't, I'm not asking for the  
11 substance.

12 MR. WALLACE: If you recall, go  
13 ahead and answer.

14 A. I think we did.

15 Q. Is this generally a summary of the  
16 technology you had as of April 29th, 1974  
17 regarding the addition of Compound W to  
18 cigarettes?

19 MR. WALLACE: Objection, this  
20 document speaks for itself.

21 MR. O'FALLON: Really, I have never  
22 heard a document talk. I'm entitled to publish  
23 this document in any way I see fit. That's not a  
24 valid objection.

25 THE WITNESS: The question was,  
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1 was this a summary?

2 MR. O'FALLON: Yes.

3 MR. WALLACE: Take the time to  
4 review the document, Mr. Price, so that you can  
5 answer Mr. O'Fallon's question. You're certainly  
6 not expected to have memorized it.

7 (Pause)

8 A. I don't know if this would be a  
9 complete summary, but it certainly summarizes some  
10 of the items.

11 Q. Does it look to be a summary of  
12 prior work?

13 A. Well, I'll direct your attention to  
14 "DWES-SE stems." That work, I think, went on  
15 prior to '74.

16 Q. The Lucky 100s referred to there,  
17 is that the Lucky 100s that were commercially  
18 produced?

19 A. No.

20 Q. There's no analysis on this  
21 particular document of the Lucky 100s that were  
22 commercially produced?

23 A. No -- time frame is wrong.  
24 Commercial production was only for three months.

25 Q. There would be documents or should

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1 be documents produced by American Tobacco that  
2 would give me the specifications for that Lucky  
3 cigarette that had the nicotine added; correct?  
4 MR. WALLACE: Objection, calls for  
5 speculation.

6 A. I don't know.

7 Q. Do you know exactly what I'd be  
8 looking for, exactly what that Lucky cigarette was  
9 called?

10 A. Lucky Strike test market,  
11 Washington, probably.

12 Q. Was there any kind of a code name  
13 for it?

14 A. Shoot, I don't know.

15 Q. It would indicate, at least on the  
16 tests that are done here, that the nicotine is  
17 being increased in the cigarette by more than one  
18 one-hundredth of a percent; correct?

19 MR. WALLACE: Object.

20 A. Well, my comment of one  
21 one-hundredth of a percent was the one that went  
22 out to commercial usage.

23 Q. I understand it. I can't find  
24 documents concerning that, so I'm going to ask you  
25 questions about this one.

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1 A. Sure.

2 Q. For instance, the regular Pall Mall  
3 red blend analyzing 1.9 percent nicotine, standard  
4 1.87, was treated with Compound W to increase  
5 nicotine in the blend by 19 percent, i.e., to 2.4  
6 percent; correct?

7 A. That's correct.

8 Q. The Lucky 100s had a 21 percent  
9 increase in its standard?

10 MR. WALLACE: Objection, vague and  
11 ambiguous.

12 MR. O'FALLON: I actually wasn't  
13 done.

14 MR. WALLACE: I'm sorry.

15 Q. The Lucky 100's blend was treated  
16 with Compound W to yield 2.58 percent nicotine, a  
17 21 percent increase above the standard --

18 THE COURT REPORTER: I'm sorry.  
19 Could you --

20 Q. To yield 2.58 percent nicotine, a  
21 21 percent increase above the standard control of  
22 2.13 percent?

23 A. That's tobacco blend.

24 Q. I'm sorry?

25 A. That was tobacco blend shifted up.

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1 Smoke doesn't change much.

2 Q. Smoke increased from .86 to 1.0;  
3 correct?

4 A. Yeah.

5 Q. On a per-puff basis from .09 to  
6 .11; correct?

7 A. Correct -- basically, not much.

8 Q. Do you know why this work was being  
9 done in 1974?

10 A. Well, we go back, just to take a  
11 relook at where things had been on the different  
12 types of additions, see if there's anything from a  
13 taste standpoint, because each one of these, we  
14 had taste evaluation, and I recollect that any  
15 additions of nicotine really did not either change  
16 much or had a deleterious effect on taste, so we  
17 were constantly going back to look at things like  
18 that.

19 Q. So, what you're telling me is that  
20 you did panel tests on cigarettes to which you had  
21 added nicotine, it had a negative impact on taste,  
22 and yet, you still test marketed a cigarette for  
23 three months with increased nicotine?

24 MR. WALLACE: Objection. I think  
25 that mischaracterizes his testimony -- talking

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1 about two different periods of time, as well,  
2 so --

3 A. This is in 1974, and as we go back,  
4 the thing that went out commercially was in '69.

5 Q. Well, you want me to go back and  
6 get the documents and show that you test paneled  
7 cigarettes in '68 and '69; do you recall that?

8 MR. WALLACE: It's been asked and  
9 answered.

10 MR. O'FALLON: No, it hasn't.

11 A. Yeah.

12 Q. Is it your testimony that  
13 cigarettes weren't tested by panels in '68 and  
14 '69; is that your testimony?

15 A. Oh, I think some were.

16 Q. And it's your testimony that this  
17 1974 document is reporting some new tests, or are  
18 they referring to some older tests?

19 A. I don't know for sure on all of  
20 these. I know the one on stems, I don't think  
21 they were made in '74.

22 Q. You don't believe they were made in  
23 '74?

24 A. Nope.

25 Q. So, that must have been an earlier  
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1 product?  
2 A. That was probably earlier.  
3 Q. So, they're reporting results from  
4 earlier research prior -- considerably prior to  
5 1974; correct?  
6 A. Quite possibly.  
7 Q. Would stand to reason; correct?  
8 A. It's certainly not dated here.  
9 (Plaintiffs' Exhibit 1144 was  
10 marked for identification.)  
11 Q. 1144 is a document -- 1144 is a  
12 document Bates stamped numbered MNAT 00316677  
13 dated May 17th, 1968; correct?  
14 A. Yes.  
15 Q. Have you seen that document  
16 previously?  
17 A. Yes.  
18 Q. It states that, "In order to  
19 determine the feasibility of increasing the  
20 nicotine content of our cigarettes by the addition  
21 of nicotine to the finishing flavor, we had Pall  
22 Mall cigarettes made up at the Virginia branch  
23 from a blend to which we added 0.2 percent  
24 nicotine as nicotine malate"; correct?  
25 A. Yes.  
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1 Q. And it appeared that they actually  
2 panel-tested those cigarettes; correct?

3 A. Yes -- says so.

4 Q. So, was the panel -- is the 1974  
5 document, is that referring to the panel tests of  
6 those Pall Malls?

7 A. Oh, I don't think so. Let me  
8 look.

9 No.

10 Q. So, apparently, you have done  
11 numerous panel tests of numerous  
12 nicotine-fortified cigarettes?

13 A. Over a period of a number of years.

14 Q. And it's your testimony that you  
15 started this whole process again in 1974?

16 A. Say it again.

17 Q. And it's your testimony that you  
18 started this whole process of evaluating  
19 cigarettes with added nicotine again in 1974?

20 A. Evaluating again -- somebody looks  
21 to compile that information, whether it was all  
22 done new or done later, I don't know.

23 Q. Well, you've testified that this  
24 was new information not based on the previous  
25 testing that was done in '68 and '69, so that's

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1       why I'm asking the question.

2               A.       Okay. You were referring to, I  
3       thought, specifically the Pall Mall cigarettes,  
4       were they the same or were they different, and I  
5       was answering, I thought, that the one that says  
6       May, '68, 17, was a separate one than the Pall  
7       Mall that was listed in the 1974 report.

8               Q.       And as you sit here today, do you  
9       know when the testing was done that's listed in  
10      the 1974 report?

11              MR. WALLACE:  Objection, asked and  
12      answered.

13              A.       I cannot certify to the A,B, C and  
14      D exactly when those results were run. I can  
15      guess on the one that it was probably done  
16      beforehand -- before '74.

17              Q.       And that would be B?

18              A.       "B."

19              MR. O'FALLON:  I would like to  
20      mark as the next exhibit a document Bates stamped  
21      MNAT 00316695 through 6698.

22                      (Plaintiffs' Exhibit 1145 was  
23                      marked for identification.)

24              Q.       Plaintiffs' Exhibit 1145 is a  
25      document dated June 5th, 1974 to a Mr. J.B.

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1     McCarthy, Executive Vice President, from a  
2     Mr. R.M. Irby, Jr., Manager, New Products  
3     Division, Research and Development?  
4             A.     Right.  
5             Q.     Have you seen this document  
6     previously?  
7             A.     Yes.  
8             Q.     Is this one of the documents you  
9     had the chance to review prior to this deposition?  
10            A.     Yes, sir.  
11            Q.     Would you have seen this document  
12     when it was written?  
13            A.     Probably not.  
14            Q.     Were you working under the new  
15     products division, research and development at  
16     this time?  
17            A.     Yes, I was.  
18            Q.     And was Mr. Irby your supervisor?  
19            A.     Second level up.  
20            Q.     The subject of this document is  
21     "Nicotine Content of Reconstituted Tobacco";  
22     correct?  
23            A.     Uh-huh, that's right.  
24            Q.     It says, "In compliance with your  
25     telephone request to Mr. V.B. Lone-gy" --  
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1 MR. WALLACE: "Lougee."

2 THE WITNESS: "Lougee."

3 MR. O'FALLON: "Lougee."

4 Q. -- "we are outlining below our  
5 current knowledge regarding increasing the  
6 nicotine content of reconstituted tobacco";  
7 correct?

8 A. Yes.

9 Q. It says, "Your present  
10 reconstituted tobacco has a nicotine content of  
11 the order of 0.9 percent"; correct?

12 A. That's correct.

13 Q. And it says, "To raise this value,  
14 one of two approaches must be taken"; right?

15 A. Yes.

16 Q. It states that "Your process of  
17 producing RC involves a water extraction of the  
18 tobacco components, concentrating the extract by  
19 evaporation, and applying this concentrated  
20 extract to the base sheet formed from the  
21 extracted fibers"; correct?

22 A. That's the way it's made, yes.

23 Q. It says, "Since the nicotine is a  
24 soluble component, it is contained in the  
25 concentrated extract portion and is of the order

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1 of 1.8 percent"; correct?

2 A. That's what it says.

3 Q. It state, "To raise the level of  
4 nicotine in the final sheet, nicotine can be added  
5 to the concentrated extract, and thereby applied  
6 to the base sheet in the normal fashion"?

7 A. Right.

8 Q. Let's look on the second page of  
9 the document under "Cast Sheet."

10 A. Okay.

11 Q. It says, "We have recently been  
12 investigating the possibility of utilizing our  
13 throw-away dust by converting it to sheet material  
14 by the cast sheet technique"?

15 A. Uh-huh.

16 Q. It says at the bottom that "The  
17 final product will have a nicotine content of the  
18 order of 80 to 84 percent of the tobacco  
19 components, i.e.," parenthetical, "1.3 to 1.5  
20 percent," then states, quote, "it should be noted  
21 that the binder component may be prohibited by  
22 England as a nontobacco additive"?

23 A. Okay.

24 Q. What would the binder component be?

25 A. If you're using a cast sheet, you

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1 often use something called a -- like a cellulose  
2 product -- a carboxymethyl cellulose, or the like.

3 Q. And are you concerned about it  
4 being prohibited by England because at the time  
5 you were producing cigarettes that were sold by  
6 Gallaher in England?

7 MR. WALLACE: Objection, calls for  
8 speculation.

9 A. Don't know that we were selling any  
10 cigarettes at all through Gallaher.

11 Q. Were you selling tobacco to  
12 Gallaher or final product to Gallaher?

13 MR. WALLACE: Objection, vague and  
14 ambiguous.

15 A. There may have been an  
16 investigation of whether -- or a request -- I  
17 don't know -- from Gallaher, but I'm not aware of  
18 any, but our Hamner plant was free to act as a  
19 converter for Gallaher, as well as all other  
20 tobacco companies.

21 Q. Was it your understanding that the  
22 addition of nicotine by adding Compound W  
23 increased impact?

24 A. Well, it certainly might, but in a  
25 lot of cases, it didn't seem to.

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1 Q. Let's look at the bottom. It  
2 states, "In general, we have found to date that  
3 increasing the level of nicotine in the smoke by  
4 the addition of Compound W has little, if any,  
5 effect on taste. Smoke impact is noted at higher  
6 levels"; correct?

7 A. That's right. That would be viewed  
8 as a rather deleterious effect, yeah.

9 Q. It's your testimony that smoker's  
10 don't want a certain level of smoke impact?

11 A. They would like a certain level of  
12 impact, but when you're working with recon -- does  
13 that say "recon" in here -- yeah -- recon is  
14 basically a negative in a taste aspect, so if you  
15 get a higher impact there, that's a higher  
16 negative.

17 Q. Well, it appears that taste and  
18 impact are two different concepts; correct?

19 A. Yes.

20 Q. "Impact" refers to the  
21 physiological sensation in the mouth and throat;  
22 correct?

23 MR. WALLACE: Objection, vague.

24 A. That's certainly one description,  
25 you get a little catch in the throat.

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1 Q. It's caused by nicotine; correct?

2 A. Well, impact -- whether exactly  
3 nicotine is attributed often to it, I'm not sure  
4 that it is all the time.

5 Q. But generally, it's accepted that  
6 nicotine causes impact; correct?

7 A. Some, uh-huh.

8 Q. And increased nicotine would  
9 increase impact; correct -- correct?

10 A. Yes.

11 MR. O'FALLON: I would like to  
12 have marked as Plaintiffs' Exhibit 1146 a document  
13 Bates stamped numbered MNAT 00367409 through  
14 7410.

15 (Plaintiffs' Exhibit 1146 was  
16 marked for identification.)

17 Q. Have you seen Plaintiffs' Exhibit  
18 1146 previously?

19 A. I believe I have.

20 Q. This document is dated June 6th of  
21 1974; correct?

22 A. Right.

23 Q. It's one day after the memo we just  
24 looked at, Plaintiffs Exhibit 1145, which is dated  
25 June 5th, 1974; correct?

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1 A. That's right.

2 Q. In fact, reference is made to the  
3 June 5th memo in this document, Plaintiffs'  
4 Exhibit 146; correct?

5 A. Somewhere, it is -- yeah, uh-huh.

6 Q. It states, quote, "Reference is  
7 made to your memorandum of June 5 regarding  
8 nicotine content of reconstituted tobacco, and the  
9 following thoughts come to mind.

10 "One, the addition of Compound W  
11 apparently accomplishes the purpose well";  
12 correct?

13 A. That's what it says.

14 Q. And the purpose appears to be to  
15 increase the nicotine content of reconstituted  
16 tobacco; correct?

17 MR. WALLACE: Wait a second. Hold  
18 on a second. I just want to look at something,  
19 Byron.

20 The document speaks for itself.  
21 Objection, calls for speculation.

22 Q. Do you still have the question in  
23 mind?

24 A. Nope.

25 MR. O'FALLON: Let's have the  
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1 question reread.

2 (Record read.)

3 THE WITNESS: Let me ask then,  
4 you're referring to the purpose of the addition of  
5 Compound W stated here?

6 MR. O'FALLON: Correct. Well, I'm  
7 referring to what's referenced in the memorandum.

8 A. Yes, I believe it says that in item  
9 three.

10 MR. WALLACE: Item three?

11 THE WITNESS: There somewhere.

12 MR. WALLACE: He's reading from  
13 item one.

14 A. Item one -- yes, it would increase  
15 the content some.

16 Q. This is written by Dr. Irby to  
17 Mr. McCarthy; correct?

18 A. Other way around.

19 Q. Oh, I'm sorry. It's written --  
20 okay. So, this is a directive from the Executive  
21 Vice President, Mr. McCarthy, to Dr. Irby, the  
22 manager of the New Products Division; is that  
23 correct?

24 A. That's right.

25 Q. And he directs him to do all

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1 research necessary to prove the feasibility or  
2 lack of same in the use of Compound W?

3 A. That's what it says.

4 Q. And additional research was done?

5 A. As I sit here, I don't know that,  
6 but I'm assuming it was.

7 Q. Do you know -- I'm sorry -- do you  
8 know when that research ended?

9 A. Not exactly.

10 Q. Do you know the rough time period  
11 in which the research took place?

12 MR. WALLACE: Objection, asked and  
13 answered.

14 A. Probably shortly thereafter. I  
15 don't know.

16 Q. Do you know who actually did the  
17 research?

18 A. No -- may have even been  
19 discontinued. I don't know.

20 Q. So, as you sit here today, you  
21 can't testify one way or the other as to whether  
22 the directive of Mr. McCarthy was ever carried  
23 out?

24 A. No, I can't do that.

25 Q. Do you know for a fact that no  
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1 nicotine was added to cigarettes by The American  
2 Tobacco Company after June of 1974?

3 MR. WALLACE: Objection, vague and  
4 ambiguous.

5 A. To the best of my knowledge, the  
6 only -- all I can say is, to the best of my  
7 knowledge, no commercial application was made,  
8 other than the one test market with Lucky  
9 Strikes.

10 All -- everything else would have  
11 been some sort of a research just to see, "Does  
12 this do this? Does this do that?"

13 That's what we do.

14 Q. Prior to being told or being asked  
15 to appear for this deposition, did you have any  
16 specific knowledge of the research work being done  
17 on Compound W?

18 A. Just my recollection of Compound W.

19 Q. Did you have any specific knowledge  
20 of what research was done in 1974 concerning  
21 Compound W?

22 A. No.

23 Q. And were you one of the people who  
24 would have been responsible for deciding whether  
25 or not to add Compound W to a commercial product

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1 after 1974?

2 A. No.

3 Q. Have you reviewed all the documents  
4 of American Tobacco Company to confirm that, in  
5 fact, Compound W was not added after 1974?

6 A. No, no way to do that.

7 Q. You understand that all the  
8 documents of the American Tobacco Company are in  
9 the possession of lawyers for the company;  
10 correct?

11 MR. WALLACE: Objection.

12 A. It's my understanding that the  
13 company files are in the warehouses in Secaucus,  
14 New Jersey.

15 Q. Under the control of  
16 Chadbourne & Parke; correct.

17 MR. WALLACE: Objection.

18 A. Yes.

19 Q. You didn't go out to a depository;  
20 correct?

21 A. No, I did not.

22 Q. Have you ever asked anybody since  
23 finding out that you would be testifying here  
24 today concerning the subject of nicotine and the  
25 addition of nicotine, whether they knew whether

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1 Compound W had ever been added to a commercial  
2 product after 1974?

3 A. Have I ever asked anybody? No,  
4 somehow -- no, I did not.

5 Q. Did you do any investigation to  
6 determine whether, in fact, Compound W was added  
7 to a commercial product after 1974?

8 A. No, I didn't, and the reason I  
9 didn't is that I knew that there was investigation  
10 going into the submission on the Waxman work.

11 Q. Did you rereview all the  
12 information from the Waxman report?

13 A. Not all of it, but I read that.

14 Q. Did you go back and ask any of the  
15 people who were involved in this time period 1974  
16 whether Compound W was ever added?

17 A. Nope, they are all gone.

18 Q. Did the lawyers ever offer to allow  
19 you to go through the production documents to  
20 determine whether Compound W was added at any  
21 point after 1974 to a commercial product?

22 MR. WALLACE: Objection, to the  
23 extent that question is designed to elicit  
24 privileged communications.

25 I instruct you not to answer.

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1 Q. Did you ever ask lawyers to go  
2 through those documents?

3 MR. WALLACE: Objection, to the  
4 extent it calls for any communications between  
5 either Mr. Price or the lawyers representing him  
6 in this litigation, and I instruct you not to  
7 answer the question.

8 Q. But, in fact, you haven't gone  
9 through any of those documents sitting in the  
10 Secaucus warehouse; correct?

11 MR. WALLACE: Objection. That  
12 question has been asked and answered two times  
13 now.

14 MR. O'FALLON: Third time's a  
15 charm.

16 MR. WALLACE: You can answer, the  
17 same -- you've answered it. Answer it for the  
18 third time for him.

19 A. No, I have not gone back through  
20 those.

21 Q. Are you aware of the concept that  
22 increased pH of cigarette smoke increases the free  
23 nicotine in cigarette smoke?

24 A. Yes, I have heard that concept.

25 Q. Did you ever do any testing on that  
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1 concept at the American Tobacco Company?

2 MR. WALLACE: Objection, vague as  
3 to time.

4 MR. O'FALLON: Any time.

5 MR. WALLACE: Objection,  
6 overbroad.

7 A. Smoke pH is not something we ran as  
8 an analytical technique. We did do it in context  
9 with cigars, we did do it on occasions, but over a  
10 period of years, no, we didn't do that.

11 Q. Did you ever investigate whether or  
12 not increased pH of tobacco smoke increased the  
13 free nicotine available in that tobacco smoke?

14 A. I can't cite any specific times  
15 that we went back and did that, but when we did  
16 measure or were aware of any changes in smoke pH,  
17 we saw little or no increase in our TVB -- smoke  
18 TVB, which would be our -- represented by  
19 nicotine.

20 Q. Well, the total volatile base  
21 represents your total volume of nicotine.

22 What I'm asking about is that  
23 portion of the nicotine that is free. You  
24 understand what "free nicotine" is?

25 A. Uh-huh.

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1 Q. "Free nicotine" is volatile  
2 nicotine; correct?

3 A. It certainly is easily extractable,  
4 and certainly, all nicotine is volatile.

5 Q. And you understand that most  
6 nicotine that's available in cigarette smoke is  
7 bound nicotine -- that is, it's bound with the  
8 salt; correct?

9 A. That's right.

10 Q. And you understand that if you  
11 increase the pH of the smoke, you actually  
12 increase the amount of that nicotine that's  
13 volatile or free; correct?

14 A. Right.

15 Q. And you understand that adding  
16 certain additional bases to your product, such as  
17 diammonium phosphate, will increase or should  
18 increase the pH of your smoke; correct?

19 A. They do not.

20 Q. So, it's your testimony that  
21 increasing smoke pH does not increase free  
22 nicotine?

23 A. The smoke pH --

24 MR. WALLACE: I'm sorry -- never  
25 mind. Withdraw that.

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1           A.       The smoke pH, to the best of my  
2 knowledge, of our cigarettes did not get up to the  
3 level that would shift into free nicotine.

4           Q.       And what level would it need to be  
5 to shift to free nicotine?

6           A.       Something above 62, 63, and we did  
7 have ones that are on the border, but again, it's  
8 not a -- a consistent product that we ran.

9           Q.       I'm going to show you a document  
10 that's been previously marked as Plaintiffs'  
11 Exhibit 1058.

12                   MR. WALLACE: Take a look at it.

13                   THE WITNESS: I have never seen it.

14                   MR. WALLACE: Well, take your time  
15 to review it.

16           Q.       1058 is a document Bates stamped  
17 numbered 511223463 through 3484. It's entitled  
18 "Implications and Activities Arising from  
19 Correlation of Smoke pH with Nicotine Impact,  
20 Other Smoke Qualities, and Cigarette Sales."

21                   Have you seen this document  
22 previously?

23           A.       Nope.

24           Q.       Let me refer you specifically to  
25 pages -- and I'm going to refer you to the last

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1 three Bates stamp numbers, 465, 466, and 479.  
2 A. 465, 466 and 4 --  
3 Q. 79.  
4 MR. WALLACE: 469 or 479?  
5 MR. O'FALLON: 479.  
6 MR. WALLACE: Thank you.  
7 A. Okay. Oh, there it is. Okay.  
8 465 -- okay.  
9 Q. And let me know when you're ready  
10 to talk about it.  
11 (Pause)  
12 A. Okay.  
13 Q. Okay. Let's go to the first page I  
14 referred you to, last three Bates number 465.  
15 Are you there?  
16 A. Uh-huh.  
17 Q. At the top, it's entitled  
18 "Implications and Activities Arising from  
19 Correlation of Smoke pH with Nicotine Impact,  
20 Other Smoke Qualities, and Cigarette Sales";  
21 correct?  
22 A. That's what it says.  
23 Q. Under "Introduction and  
24 Objectives," it states, "This year, the continuing  
25 vigorous sales growth of various competitive  
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1 cigarette brands, especially Marlboro and Kool,  
2 prompted an intensive study of the physical and  
3 chemical properties of those brands as compared  
4 with our brands. This was aimed at (1)  
5 identifying any significant property differences  
6 which might correlate with market performance; (2)  
7 measuring and monitoring such differences, and (3)  
8 learning how such differences are achieved,  
9 permitting us to achieve similar effects in our  
10 existing or new brands, if desired."

11 Did you ever do such similar kind  
12 of research when you were with American Tobacco?

13 MR. WALLACE: Objection. It's a  
14 compound question. It's also vague.

15 A. Well, if you're asking me did we  
16 look or do any reverse engineering on Marlboro  
17 product; yes.

18 Did we do anything that was similar  
19 to this that you're referring to on the measuring  
20 and monitoring the differences; yeah, we would do  
21 that.

22 Q. Who did the reverse engineering  
23 work?

24 A. Oh, different people, some  
25 analytical work, some was certainly taste and

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1 blend.

2 Q. Did you do any of it?

3 A. Some would have been done under  
4 my -- certainly under my staff members.

5 Q. And by "reverse engineering" --

6 A. And also some -- well, it would  
7 have been on my, too -- I was going to say  
8 "routine analysis."

9 Q. And by "reverse engineering," did  
10 you analyze the tobacco smoke and the tobacco of  
11 Marlboro and try to determine why it was -- why it  
12 had the makeup it had?

13 A. Yeah, but I don't think we ever got  
14 very far. We did better just by taste -- taste  
15 smoking.

16 Q. Let's go to page 2 of this  
17 document, which is the bottom --

18 A. 466?

19 Q. 466, right. Roman numeral III is  
20 entitled "Smoke pH and Free Nicotine"; correct?

21 A. Yes.

22 Q. The first sentence of the document  
23 states that, "In essence, a cigarette is a system  
24 for delivery of nicotine to the smoker in  
25 attractive, useful form"; correct?

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1           A.       That's what that sentence is.  
2           Q.       You would disagree with that?  
3           A.       I disagree with that.  
4           Q.       It goes on to state, "At," quote,  
5 "normal," end quote, "smoke pH at or below about  
6 6, essentially all of the smoke nicotine is  
7 chemically combined with acidic substances; hence,  
8 is nonvolatile and relatively slowly absorbed by  
9 the smoker"; is that correct?  
10          A.       Yep.  
11          Q.       You would agree with that?  
12          A.       Pretty much, but I need to say at  
13 this point, smoke pH is one of the poorest  
14 analytical techniques that anybody does, and it's  
15 completely dependent on methodology.  
16          Q.       And does your company do smoke pH  
17 measurements?  
18          A.       We did some.  
19          Q.       When?  
20          A.       Intermittently, oh, by different  
21 methods from -- well, maybe before I even joined  
22 the company. There was a method available -- I  
23 don't know how often it was used -- up through  
24 maybe the early '80s. Certainly, after we sold  
25 our cigar company, we didn't run smoke pH to speak  
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1 of.

2 Q. Okay. So, the majority of your  
3 smoke pH testing was done on cigars?

4 A. A lot was done on little cigars,  
5 and at the same time, we would run some  
6 cigarettes.

7 Q. Kind of as a byproduct of testing  
8 the cigars?

9 A. If we were doing it, we would  
10 piggyback it.

11 Q. So, you weren't specifically  
12 looking at cigarettes; correct?

13 A. No, not in a systematic fashion.

14 Q. Okay. And as best you can recall,  
15 you never did look at cigarettes in a systematic  
16 fashion to evaluate smoke pH; correct?

17 MR. WALLACE: Objection, asked and  
18 answered.

19 A. We did not do them on a routine,  
20 quarterly analysis basis, no.

21 Q. I think the word you used was  
22 "systematic," you did not do them on a systematic  
23 basis either; correct?

24 A. Well, let me -- "systematic," if I  
25 define "systematic" as something we did on routine

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1 analysis, say quarterly market lot, no, we didn't  
2 do that.

3 Did it get looked at from time to  
4 time; yes, in a system to that, but I want to make  
5 that distinction, okay?

6 Q. When it was looked at, it was  
7 looked at as a byproduct of your testing of your  
8 cigars and little cigars; correct?

9 A. Well, I don't know. Maybe you mean  
10 the same thing, but certainly, byproduct -- it was  
11 certainly run at the same time because it was  
12 convenient to do that, yes.

13 Q. This document goes on to state that  
14 "As the smoke pH increases above about 6, an  
15 increasing proportion of the total smoke nicotine  
16 occurs in," quote, "free," end quote, "form, which  
17 is volatile, rapidly absorbed by the smoker and  
18 believed to be instantaneously perceived as  
19 nicotine kick"; correct?

20 MR. WALLACE: "Instantly."

21 MR. O'FALLON: "Instantly perceived  
22 as nicotine kick"; correct?

23 A. That's what this report says.

24 Q. You disagree with that?

25 A. I don't know. I have no real -- I

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1 have heard this thesis, and I have no real -- I  
2 have no comment one way or another.  
3 Q. Let's look at Bates number 3479  
4 quickly.  
5 A. 3 -- what?  
6 Q. 3479.  
7 A. Okay. I got it.  
8 Q. This is a chart that basically  
9 tracks "pH, Nicotine and Smoke Quality"; correct?  
10 A. That's what it says.  
11 Q. It would show that as the pH of the  
12 smoke increases, so does the percentage of free  
13 nicotine available in the smoke; correct?  
14 A. Sure.  
15 Q. And it shows that in that area  
16 where there's more free nicotine, that there's  
17 more rapid nicotine absorption; correct?  
18 A. Nicotine -- this is pH -- nicotine  
19 absorption?  
20 Q. You see on the side -- on the  
21 left-hand side at the top, it says, "Effects on  
22 Smoker"?  
23 A. Yeah, okay.  
24 Q. And then underneath that, you go to  
25 "Area of," colon?

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1 A. All right.  
2 Q. It says, "Rapid nicotine  
3 absorption"; correct?  
4 A. "High Burley (nicotine) flavor" --  
5 okay, I see that now.  
6 Q. And that's across from the portion  
7 of the chart that shows increased free nicotine;  
8 correct?  
9 A. Sure. I see that now.  
10 Q. Whereas, when you look farther down  
11 on the left-hand column into the area where you're  
12 showing low pH, it's showing slow nicotine  
13 absorption; correct --  
14 A. Yes.  
15 Q. -- and irritation to the mouth and  
16 nose; correct?  
17 A. That's what it says.  
18 MR. O'FALLON: Let's go to Category  
19 II.  
20 MR. WALLACE: With that, I think it  
21 would be appropriate for us to take a break while  
22 we mark this.  
23 MR. O'FALLON: That's fine.  
24 (Recess taken for Category II  
25 testimony.)  
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1 MR. WALLACE: It's my understanding  
2 that Mr. O'Fallon has completed his examination of  
3 American's 30.02(f) witness with respect to topics  
4 1 through 5.

5 With that understanding, we have no  
6 Redirect questions for Mr. Price.

7 Thank you.

8 (Deposition recessed at 4:20  
9 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, Sue A. Terry, RPR/CRR, hereby  
3 certify that I am qualified as a verbatim  
4 shorthand reporter; that I took in stenographic  
5 shorthand the testimony of BYRON F. PRICE at the  
6 time and place aforesaid; and that the foregoing  
7 transcript is a true and correct, full and  
8 complete transcription of said shorthand notes, to  
9 the best of my ability.

10 Dated at New York, New York, this  
11 26th day of August, 1997.

12  
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14 \_\_\_\_\_  
15 SUE A. TERRY, RPR/CRR  
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1	I N D E X		
2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Plfs' Ex 1125	Letter dated 8-12-97	
4		and copy of Notice	
5		of Taking Deposition	5
6	1126	Letter dated 7-30-57,	
7		Bates MNAT00724279-80	64
8	1127	Memorandum, Bates	
9		MNAT00880155	86
10	1128	New York Times article	
11		dated 4-6-1967	98
12	1129	New York Times ad	
13		appearing 9-4-69	100
14	1130	Memorandum, Bates	
15		ATX090027268	107
16	1131	Memorandum, Bates	
17		ATX090029914	114
18	1132	Note dated 4-12-78	116
19	1133	Research Conference	
20		Bates 110070785-842	130
21	1134	Project proposals,	
22		Bates 100503495 to	
23		100503506	149
24	1135	"The Importance of	
25		Biological Research,"	
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1		Bates MNAT00374276-280	170
2	1136	Letter dated 12-6-77,	
3		Bates ATX090027291-294	185
4	1137	Letter dated 4-4-78,	
5		Bates 680212421-423	194
6	1138	"The Effect of the	
7		Addition of 1% Nicotine	
8		on the Quality of RC	
9		Tobacco," Bates	
10		MNAT00316688	206
11	1139	"Evaluation of Nicotine	
12		Fortified RC-A Tobacco,"	
13		Bates MNAT00316683-84	215
14	1140	Memorandum dated 4-10-68,	
15		Bates 621400407-412	219
16	1141	Memorandum dated 5-14-69,	
17		Bates MNAT00533224	227
18	1142	Memorandum dated 5-29-69,	
19		Bates MNAT005333523	230
20	1143	Document dated 4-29-74,	
21		Bates MNAT00533255-56	234
22	1144	Document dated 5-17-68,	
23		Bates MNAT00316677	241
24			
25			

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1 1145 Document dated 6-5-74,  
2 Bates MNAT00316695-98 243  
3 1146 Memorandum dated 6-6-74,  
4 Bates MNAT00367409 249  
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